

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

75-7463

United States Court of Appeals

For the Second Circuit.

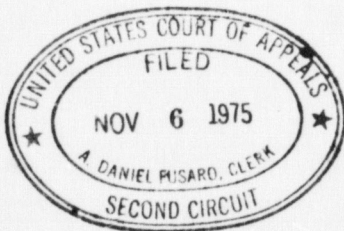
Bp/s

JAMES B. LANSING SOUND, INC.,
Plaintiff-Appellee,
against

ULTRALINEAR SOUND CORP. and FDDIE ANTAR,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK.

APPENDIX.



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SQUADRON, GARTENBERG, ELLENOFF & PLESENT
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(212) 661-6500

PAGINATION AS IN ORIGINAL COPY

Serve Appendix on---- (2 copies)

Squadron Gartenberg Ellenoff & Plesent
551 5th. Avenue

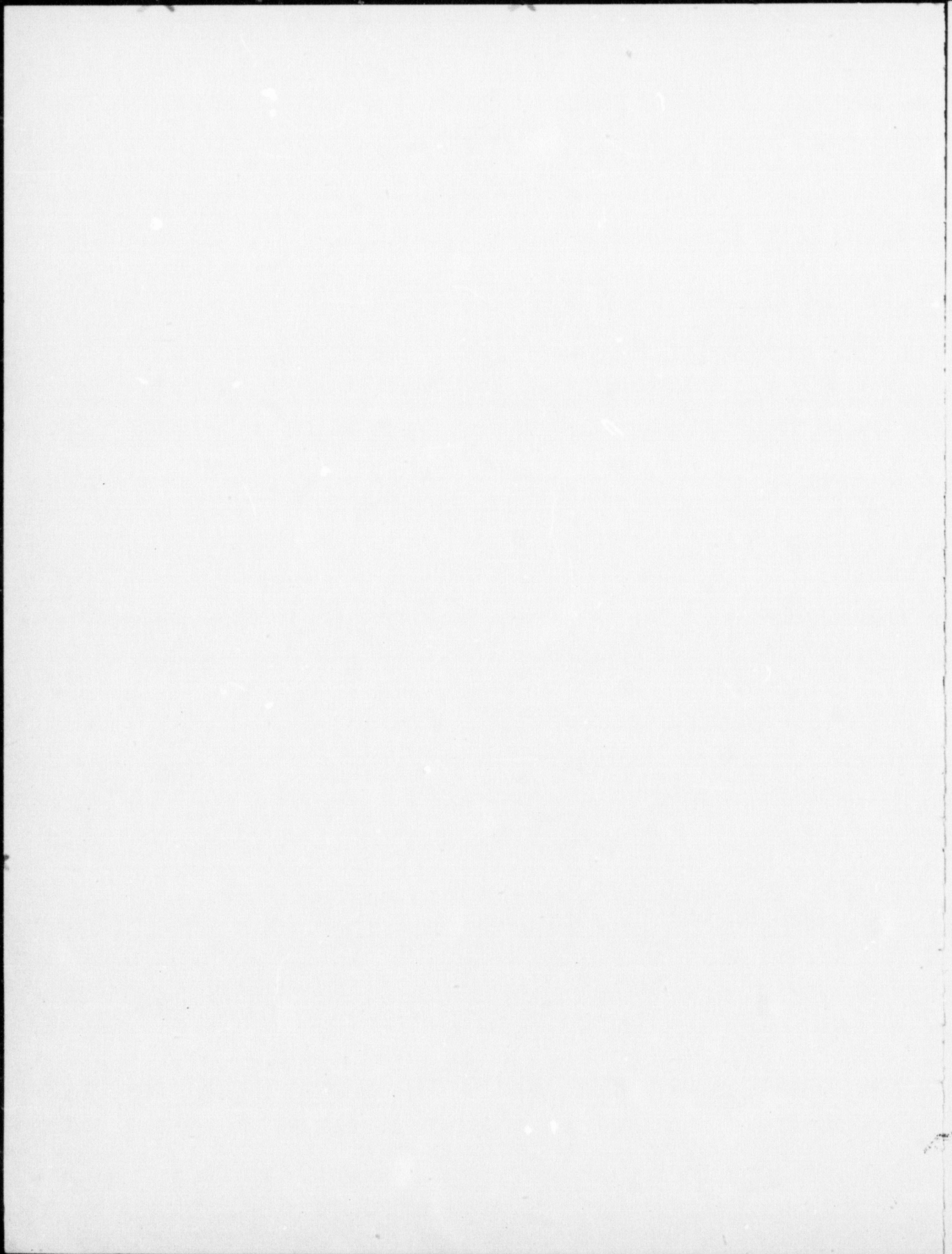
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TESTIMONY

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1a

UNITED STATES COURT OF APPEALS,
FOR THE SECOND CIRCUIT.

-----X

JAMES B. LANSING SOUND, INC.,

Plaintiff-Appellee,

against ,

ULTRALINEAR SOUND CORP. and EDDIE ANTAR,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

-----X

DOCKET ENTRIES.

74C 1180 JAMES D. LANSING SOUND INC. - vs. S ULTRALINEAR SOUND

DATE	FILINGS-PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS	
8-12-74	Complaint filed. Summons issued	1	JR
8-14-74	Summons returned and filed/executed.	2	
8-14-74	Bond undertaking on injunction filed.	3	
8-14-74	By NEAHER, J. - Order to show cause dtd 8-12-74 for an order to enjoin defts from selling any of plttf's products, etc. ret 8-22-74 at 10 A.M. with T.R.O. filed (service on document #2).	4	
8/22/74	By NEAHER, J. - Order dated Aug. 21, 1974 filed that the return date of the Order to Show Cause herein issued on Aug. 12, 1974 is adjd to Sept. 24, 1974 before O. Judd, etc.	5	
8-22-74	Before NEAHER, J - Case called for hearing on order to show cause. No appearances. Marked off.		
8-22-74	Plttf's memorandum of law in support of application for TRO filed.	6	
9-24-74	Before JUDD, J. - Case called- Adj'd to 9-28-74 at 11:00 A.M. for argument		
9-30-74	By JUDD, J. - Order to show cause for an order to punish defts for contempt, ret 9-28-74 filed.	7	
10-18-74	By JUDD, J. - FINAL JUDGMENT dtd 10-18-74 granting permanent injunction against defts filed. (p/c mailed to attys) <i>see memo</i>	8	<i>JK</i>
6-18-75	By JUDD, J. - Order to show cause dtd 6-13-75 ret 6-20-75 (without proof of service) for an order to hold Ultralinear Sound Corp & Antar in contempt, etc. filed.	9	
6-18-75	Memorandum of law in support of order to show cause filed.	10	
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DOCKET ENTRIES

7-2-75	Before JUDD, J. - Case called. Hearing on pl'tff's motion for contempt begun. Both sides rest. Hearing concluded. Court finds deft in contempt of injunction. Deft fined \$850. Order to be submitted.	
7-11-75	By JUDD, J. - Order of contempt against defts filed.	14
7-13-75	Notice of appeal filed. Copy sent to C of A etc.	15
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7-25-75	Before JUDD, J. - Case called. Motion marked submitted. Decision reserved.	
7-28-75	By JUDD, J. - Order dtd 7-25-75 granting supersedeas filed.	(17)
7-31-75	\$850. deposited in Registry of Court in lieu of supersedeas bond. (Receipt #68133)	---
8-13-75	Entire file certified and mailed to C of A. (Only documents 10 thru 16 and exhibits A, 1 and 2) Copy of stip. in folder.	----
8-15-75	Acknowledgment rec'd from C of A for receipt of supplemental record on appeal & filed. (Do. 10-16, Exh. 1-2 & A.)	(18)

ORDER TO SHOW CAUSE.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

JAMES B. LANSING SOUND, INC.,	:	
Plaintiff,	:	
-against-	:	74 Civ. 1180 (OGJ)
ULTRALINEAR SOUND CORP. and EDDIE	:	<u>ORDER TO SHOW CAUSE</u>
ANTAR,	:	
Defendants.	:	

----- x

Upon the annexed affidavits of Neal M. Goldman, Lawrence Fay and Frank Graziadei, and the exhibits thereto attached, and upon all the proceedings had herein and the final judgment entered herein, it is

ORDERED that the defendants Ultralinear Sound Corp. and Eddie Antar show cause at a motion term of this Court, to be held in Courtroom 11, United States Court House, Brooklyn, New York, at 10:00 A.M., on the 1st day of July, 1975, or as soon thereafter as counsel can be heard, why the said Ultralinear Sound Corp. and Eddie Antar should not be punished for a contempt of court because of their misconduct in failing to obey, comply with and carry out the provisions of the final judgment duly entered herein on October 18, 1974, which enjoined the said defendants from offering or selling the plaintiff's products at less than the minimum fair trade resale price therefor.

5a

ORDER TO SHOW CAUSE

Service of a copy of this Order To Show Cause, together with the papers upon which it is based, by certified mail sent to defendants on or before the 19th day of June, 1975, shall be deemed sufficient.

Dated: Brooklyn, New York
June 19, 1975

/s/ Orin G. Judd
Orin G. Judd, U.S.D.J.

AFFIDAVIT OF NEAL M. GOLDMAN IN SUPPORT OF MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

JAMES B. LANSING SOUND, INC.,	:	
Plaintiff,	:	
-against-	:	74 Civ. 1180 (OGJ)
ULTRALINEAR SOUND CORP. and	:	<u>AFFIDAVIT</u>
EDDIE ANTAR,	:	
Defendants.	:	

----- x

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

NEAL M. GOLDMAN, being duly sworn, deposes and says:

1. I am a member of the bar of this Court and of the firm of Squadron, Gartenberg, Ellenoff & Plesent, attorneys for plaintiff. I make this affidavit in support of plaintiff's motion for an order holding defendants in contempt of this Court for violating its final judgment.

2. On October 18, 1974, this Court entered a final judgment enjoining Ultralinear Sound Corp. and Eddie Antar from violating plaintiff's fair trade program by offering or selling its products at less than its minimum fair trade resale price as set forth in a copy of said judgment attached hereto as Exhibit A.

AFFIDAVIT OF NEAL M. GOLDMAN IN SUPPORT OF MOTION

3. Said injunction has been in full force and effect since its entry; a copy thereof was formally served upon defendants on October 26, 1974 (See Exhibits B and C) although, since they consented thereto, they had prior knowledge of its existence. They have at all times had full knowledge of its terms.

4. Defendants have failed and refused to comply with and have disobeyed and disregarded the provisions of said injunction in that they have offered and caused to be offered plaintiff's products at less than the minimum fair trade resale price therefor, as more particularly shown by the affidavits of the JBL shoppers.

5. In view of the warning I sent to defendants on January 20, 1975, copies of which are annexed hereto as Exhibits D and E, the receipt of which defendants acknowledged on February 3, 1975, these violations are wilful and contumacious.

6. By reason of defendants' contempt, plaintiff has not only sustained injury to its good will, but has been compelled to expend attorney's and other fees to vindicate its rights. I have expended more than five hours of time to date on this application in interviewing shoppers, interviewing plaintiff's employees, preparing an order to show cause, affidavits and a memorandum of law. I reasonably expect that more time will be spent in appearing to have the Order to Show Cause signed,

AFFIDAVIT OF NEAL M. GOLDMAN IN SUPPORT OF MOTION

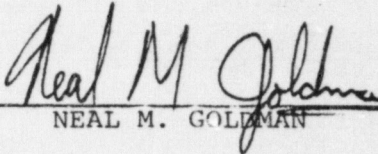
and preparing for and appearing at any hearing the Court may direct be held. Thus, plaintiff has been compelled to incur fees which have already exceeded \$500.

7. This application is made by order to show cause because it seeks a holding of contempt. No previous application for this relief has been made to this or any other Court.


WHEREFORE, on behalf of plaintiff, I respectfully ask this Court for an order in the form annexed requiring said defendants to answer and show cause why they should not be adjudged in contempt of this Court, and, upon return of said order, to adjudge defendants in contempt of this Court for having violated and disregarded the terms of said injunction, and to order that each defendant purge himself and itself of said contempt by payment to plaintiff of a sum equal to its profits from all sales of JBL products at less than the minimum fair trade

AFFIDAVIT OF NEAL M. GOLDMAN IN SUPPORT OF MOTION

resale price from October 26, 1975 to the date of the Court's order, together with all costs of this proceeding, including reasonable attorney's fees.


NEAL M. GOLDMAN

Sworn to before me this
12th day of June, 1975.


Notary Public

THEODORE ELLENOFF
NOTARY PUBLIC, State of New York
No. 31-6172725
Qualified in New York County
Commission Expires March 30, 1976

EXHIBIT A, ANNEXED TO AFFIDAVIT OF NEAL M. GOLDMAN--
FINAL JUDGMENT OF PERMANENT INJUNCTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
JAMES B. LANSING SOUND, INC.

Plaintiff,

-against-

ULTRALINEAR SOUND CORP. and
EDDIE ANTAR,

Defendants.
-----x

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ OCT 18 1974 ★

TIME A.M.
P.M.
74 Civil 1180
(OGJ)

FINAL JUDGMENT OF
PERMANENT INJUNCTION

Plaintiff, having commenced the within action against the defendants, seeking a judgment of permanent injunction as set forth in the complaint, and having moved, pursuant to Rule 65 of the Federal Rules of Civil Procedure, for an order of preliminary injunction as set forth in the Order to Show Cause dated August 12, 1974; and defendants having appeared herein by their attorneys, William Saltzman, Esq. and Solomon Antar, Esq.; and the plaintiff and defendants having adjusted their differences and defendants having consented to the entry of this judgment; and the Court being satisfied that defendants have wilfully and knowingly advertised, offered for sale and sold sound reproduction equipment manufactured, distributed and produced by plaintiff under plaintiff's trademarks at prices less than the minimum resale prices established by plaintiff therefor, pursuant to valid fair trade practices now in effect between plaintiff and persons

EXHIBIT A, ANNEXED TO AFFIDAVIT OF NEAL M. GOLDMAN

dealing in said products in New York State; and that plaintiff has thereby suffered and will continue to suffer irreparable injury;

NOW, THEREFORE, IT IS:

ORDERED AND ADJUDGED that defendants, ULTRALINEAR SOUND CORP. (hereinafter USC) and EDDIE ANTAR (hereinafter ANTAR) jointly and severally, their agents, servants, employees, attorneys and all persons in active concert and participation with them or subject to their control, be and they hereby are permanently enjoined from wilfully and knowingly, directly or indirectly, advertising, offering for sale or selling, in or from the State of New York any of the products of the plaintiff identified on the plaintiff's price list dated May 1, 1974 and all replacements therefor and successors thereto (Price List):

A. At prices which are less than the minimum resale prices established by JBL on the Price List;

B. In combination with other merchandise at a single, combination or joint price, in such a manner or under such conditions of sale as to have the effect of constituting a refund, discount, allowance or concession of any kind or character from the price of the JBL products as set forth on the Price List; or

C. In connection with any such advertising, offers or sales, offering or giving any refunds, discounts, allowances or concessions of any kind or character which will have the effect

EXHIBIT A, ANNEXED TO AFFIDAVIT OF NEAL M. GOLDMAN

of decreasing the selling price of the products identified on the Price List, below the minimum resale prices established by JBL on the Price List; and it is further


ORDERED AND ADJUDGED, that defendants pay to plaintiff the sum of TWO HUNDRED FIFTY (\$250.00) DOLLARS costs of this action; and it is further

ORDERED AND ADJUDGED, that upon payment by defendants to plaintiff of the sum of FIFTY (\$50.00) DOLLARS costs, plaintiff's application, made by Order to Show Cause dated September 24, 1974, to hold defendants in contempt of Court for failing to obey, comply with and carry out the provisions of the Court's temporary restraining order of August 12, 1974, be and the same hereby is denied without prejudice; and it is further

ORDERED AND ADJUDGED, that the undertaking on the temporary restraining order heretofore filed by plaintiff on August 14, 1974 by means of National Surety Corporation Bond No. 244149 be and the same hereby is discharged; and it is further

ORDERED AND ADJUDGED, that the Court retain jurisdiction for the purposes of enforcing this Judgment.

Dated: Brooklyn, New York
October 18, 1974



ORRIN G. JUDD
U.S.D.J.

EXHIBIT B, ANNEXED TO AFFIDAVIT OF NEAL M. GOLDMAN--
LETTER, DATED OCTOBER 22, 1974.

No. 355162

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

SENT TO Ultralinear Sound Corp.		POSTMARK OR DATE 
STREET AND NO. 1117 Kings Highway		
P.O. STATE AND ZIP CODE Brooklyn, New York 11219		
OPTIONAL SERVICES FOR ADDITIONAL FEES		
RETURN RECEIPT SERVICES	1. Shows to whom and date delivered With delivery to addressee only	65¢
	2. Shows to whom, date and where delivered With delivery to addressee only	35¢
DELIVER TO ADDRESSEE ONLY		45¢
SPECIAL DELIVERY (2 pounds or less)		
POD Form 3800 July 1969		NO INSURANCE COVERAGE PROVIDED— NOT FOR INTERNATIONAL MAIL
		(See other side) GPO 1969 O-258-212

SENDER: Be sure to follow instructions on other side


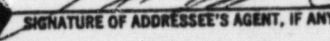
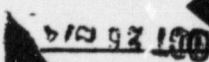
PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED BLOCK(S)
(Additional charges required for these services)

☒ Show to whom, date and address
where delivered

☐ Deliver ONLY
to addressee

RECEIPT

Received the numbered article described below

REGISTERED NO.	 SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in)
CERTIFIED NO. 355162	
INSURED NO.	
DATE DELIVERED	SHOW WHERE DELIVERED (Only if requested, and include ZIP Code)  SIGNATURE OF ADDRESSEE'S AGENT, IF ANY
	

14a

EXHIBIT B, ANNEXED TO AFFIDAVIT OF NEAL M. GOLDMAN

October 22, 1974

Ultralinear Sound Corp.
1117 Kings Highway
Brooklyn, New York 11219

Re: James B. Lansing Sound, Inc. v.
Ultralinear Sound Corp. and Eddie Antar

Gentlemen:

I enclose herewith a conformed copy of the final judgment of permanent injunction entered herein per your consent.

On behalf of James B. Lansing Sound, Inc. I hereby make formal demand upon you to comply with each and every requirement of the enclosed injunction.

Very truly yours,

Neal M. Goldman

NMG:rr
Enclosure

cc: Solomon Antar, Esq.
William Saltzman, Esq.

15a

EXHIBIT C, ANNEXED TO AFFIDAVIT OF NEAL M. GOLDMAN--
LETTER, DATED OCTOBER 22, 1974.

No. 355166

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

SENT TO Mr. Edward Antar/c/o Ultralinear		POSTMARK OR DATE
STREET AND NO. 1117 Kings Highway		
P.O. STATE AND ZIP CODE Brooklyn, New York 11219		
OPTIONAL SERVICES FOR ADDITIONAL FEES		
RETURN RECEIPT SERVICES	1. Shows to whom and date delivered With delivery to addressee only	30¢
	2. Shows to whom, date and where delivered With delivery to addressee only	85¢
DELIVER TO ADDRESSEE ONLY		50¢
SPECIAL DELIVERY (2 pounds or less)		45¢
POD Form 3800 July 1969		NO INSURANCE COVERAGE PROVIDED— NOT FOR INTERNATIONAL MAIL
		(See other side— * GPO : 1969 O-355-3



SENDER: Be sure to follow instructions on other side

PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED BLOCK(S) (Additional charges required for these services)	
<input checked="" type="checkbox"/> Show to whom, date and address where delivered	<input type="checkbox"/> Deliver ONLY to addressee

RECEIPT

Received the numbered article described below

REGISTERED NO.		SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in)
CERTIFIED NO. 355166		
INSURED NO.		
DATE DELIVERED OCT 23 1974		SHOW WHERE DELIVERED (Only if requested, and include ZIP Code)

EXHIBIT C, ANNEXED TO AFFIDAVIT OF NEAL M. GOLDMAN

October 22, 1974

Mr. Edward Antar
c/o Ultralinear Sound Corp.
1117 Kings Highway
Brooklyn, New York 11219

Re: James B. Lansing Sound, Inc. v.
Ultralinear Sound Corp. and Eddie Antar

Dear Eddie:

I enclose herewith a conformed copy of the final judgment of permanent injunction entered herein per your consent.

On behalf of James B. Lansing Sound, Inc. I hereby make formal demand upon you to comply with each and every requirement of the enclosed injunction.

Very truly yours,

Neal M. Goldman

NMG:rr
Enclosure

cc: Solomon Antar, Esq.
William Saltaman, Esq.

EXHIBIT D, ANNEXED TO AFFIDAVIT OF NEAL M. GOLDMAN--
LETTER, DATED JANUARY 20, 1975.

No. 355191

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

SENT TO <i>Ultra Linear Sound Corp</i>		POSTMARK OR DATE <i>1/20/75</i>
STREET AND NO. <i>1117 Kings Hwy, Bklyn</i>		
P.O., STATE AND ZIP CODE <i>Attn: Eddy Antar Pres. NY 11234</i>		
OPTIONAL SERVICES FOR ADDITIONAL FEES		
RETURN RECEIPT SERVICES	1 Shows to whom and date delivered With delivery to addressee only	15¢ 65¢
	2 Shows to whom, date and where delivered With delivery to addressee only	35¢ 85¢
DELIVER TO ADDRESSEE ONLY		50¢
SPECIAL DELIVERY (2 pounds or less)		45¢

FDD Form 3800
July 1969

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See other side)
* GPO : 1969 O-356-312

SENDER: Complete items 1 and 2. Add your address in the "RETURN TO" space on reverse.		
1. The following service is requested (check one).		
<input type="checkbox"/>	Show to whom and date delivered.....	15¢
<input type="checkbox"/>	Show to whom, date, & address of delivery..	35¢
<input type="checkbox"/>	DELIVER ONLY TO ADDRESSEE and show to whom and date delivered.....	65¢
<input type="checkbox"/>	DELIVER ONLY TO ADDRESSEE and show to whom, date, and address of delivery.....	85¢
2. ARTICLE ADDRESSED TO: <i>ULTRA LINEAR SOUND CORP</i> <i>1117 KINGS HWY. BRLYN. NY</i> <i>ATTN: EDDY ANTAR, PRES.</i>		
3. ARTICLE DESCRIPTION:		
REGISTERED NO. <i>355191</i>	CERTIFIED NO. <i>355191</i>	INSURED NO.
(Always obtain signature of addressee or agent)		
I have received the article described above. SIGNATURE <i>[Signature]</i>		
4. DATE OF DELIVERY <i>JAN 21 1975</i>		POSTMARK
5. ADDRESS (Complete only if requested)		
6. UNABLE TO DELIVER BECAUSE:		CLERK'S INITIALS

EXHIBIT D, ANNEXED TO AFFIDAVIT OF NEAL M. GOLDMAN

January 20, 1975

Certified Mail
Return Receipt Requested

Ultralinear Sound Corp.
1117 Kings Highway
Brooklyn, New York 11234

Attention: Eddy Antar, President

Re: James B. Lansing Sound Inc.
v. Ultralinear Sound Corp.
and Eddie Antar

Dear Mr. Antar:

It has come to our attention that a salesman in your Syosset, New York branch, who identified himself as Charlie, offered for sale two JBL L16 speakers at an aggregate price of \$245.00, well below the minimum Fair Trade resale price stipulated therefor. Such offer violates JBL's Fair Trade agreements and the injunction heretofore entered in the United States District Court for the Eastern District of New York against you.

Please be advised that unless we receive written assurance within seven days of the date hereof that you have taken steps to insure compliance with the terms of the injunction by sales personnel at all your locations, including but not limited to 1117 Kings Highway, Brooklyn, New York, and 404 Jericho Turnpike, Syosset, New York, we are authorized to bring on a motion to hold you in contempt of the Court's injunction. In such event, we shall seek the maximum damages and fines authorized by law.

Very truly yours,

NMG:jb

cc: David P. Schulman, Esq.

Neal M. Goldman

EXHIBIT E, ANNEXED TO AFFIDAVIT OF NEAL M. GOLDMAN--
LETTER, DATED JANUARY 20, 1975.

No. 355190

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

SENT TO <i>Mr. Eddie Antar, Ultralinear</i>		POSTMARK OR DATE <i>1/20/75</i>
STREET AND NO. <i>1117 Kings Hwy</i>		
P.O., STATE AND ZIP CODE <i>Brlyn NY 11234</i>		
OPTIONAL SERVICES FOR ADDITIONAL FEES		
RETURN RECEIPT SERVICES	1. Shows to whom and date delivered With delivery to addressee only	15¢ 65¢
	2. Shows to whom, date and where delivered With delivery to addressee only	35¢ 85¢
DELIVER TO ADDRESSEE ONLY		50¢
SPECIAL DELIVERY (2 pounds or less)		45¢

POD Form 3800 July 1969 NO INSURANCE COVERAGE PROVIDED—NOT FOR INTERNATIONAL MAIL (See other side) * GPO : 1969 O-358-312

Write your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).

☐ Show to whom and date delivered..... 15¢

☐ Show to whom, date, & address of delivery.. 35¢

☐ DELIVER ONLY TO ADDRESSEE and show to whom and date delivered..... 65¢

☐ DELIVER ONLY TO ADDRESSEE and show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO:
MR. EDDIE ANTAR
c/o ULTRALINEAR SOUND CORP.
1117 KINGS HWY, BRLYN. NY

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	<i>355190</i>	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE
[Signature]

4. DATE OF DELIVERY <i>JAN 22 1975</i>	POSTMARK
5. ADDRESS (Complete only if requested)	
6. UNABLE TO DELIVER BECAUSE:	
CLERK'S INITIALS	

* GPO : 1974 O - 527-803

EXHIBIT E, ANNEXED TO AFFIDAVIT OF NEAL M. GOLDMAN

January 20, 1975

Certified Mail
Return Receipt Requested

Mr. Eddie Antar
c/o Ultralinear Sound Corp.
1117 Kings Highway
Brooklyn, New York 11234

Re: James B. Lansing Sound Inc.
v. Ultralinear Sound Corp.
and Eddie Antar

Dear Mr. Antar:

It has come to our attention that a salesman in your Syosset, New York branch, who identified himself as Charlie, offered for sale two JBL L16 speakers at an aggregate price of \$245.00, well below the minimum Fair Trade resale price stipulated therefor. Such offer violates JBL's Fair Trade agreements and the injunction heretofore entered in the United States District Court for the Eastern District of New York against you.

Please be advised that unless we receive written assurance within seven days of the date hereof that you have taken steps to insure compliance with the terms of the injunction by sales personnel at all your locations, including but not limited to 1117 Kings Highway, Brooklyn, New York, and 404 Jericho Turnpike, Syosset, New York, we are authorized to bring on a motion to hold you in contempt of the Court's injunction. In such event, we shall seek the maximum damages and fines authorized by law.

Very truly yours,

AFFIDAVIT OF LAWRENCE FAY IN SUPPORT OF MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x
JAMES B. LANSING SOUND, INC., :
Plaintiff, : 74 Civ. 1180 (OGJ)
-against- :
ULTRALINEAR SOUND CORP. and : AFFIDAVIT
EDDIE ANTAR, :
Defendants. :
----- x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

LAWRENCE FAY, being duly sworn, deposes and says:

1. I reside at 6 Sharon Court, Plainview, New York
11803.

2. I am employed on a part-time basis for the New York
Audio Team as a shopper. As such, my responsibilities include
visiting various outlets for products made by James B. Lansing
Sound, Inc. ("JBL") to determine whether such outlets are in
compliance with the Fair Trade Law in the offer and sale of
JBL products.

3. On Saturday, April 26, 1975, at about 4:00 p.m.,
I visited the premises of the defendants at 1117 Kings Highway,
Brooklyn, New York. I approached a salesman, a male caucasian

AFFIDAVIT OF LAWRENCE FAY IN SUPPORT OF MOTION

of about 25 years of age with thinning red hair and a red mustache who identified himself only as Barry. I told him that I was interested in JBL speakers and asked him for defendants' prices on the Model L-100 and L-36 speakers. Barry said that defendants would sell me two L-100 speakers for \$500 and two L-36 speakers for \$300.

4. I did not suggest any price for this merchandise to Barry and Barry did not suggest to me that these goods were used or damaged in any way.

5. On April 26, 1975, the JBL minimum fair trade resale price for the L-100 speaker was \$297 or \$594 for the pair, and its minimum fair trade resale price for the L-36 speaker was \$198 or \$396 for the pair.

Lawrence Fay
LAWRENCE FAY

Sworn to before me this

10th day of June, 1975.

Neal M. Goldman
Notary Public

NEAL M. GOLDMAN
Notary Public, State of New York
No. 21-1486350
Qualified in Kings County
Commission Expires March 30, 1977

AFFIDAVIT OF FRANK GRAZIADEI IN SUPPORT OF MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

JAMES B. LANSING SOUND, INC.,	:	
	:	
Plaintiff,	:	74 Civ. 1180 (OGJ)
	:	
-against-	:	
	:	
ULTRALINEAR SOUND CORP. and	:	<u>AFFIDAVIT</u>
EDDIE ANTAR,	:	
	:	
Defendants.	:	

----- x

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

FRANK GRAZIADEI, being duly sworn, deposes and says:

1. I reside at 1614 West 1st Street, Brooklyn, New York 11223.
2. I am employed on a part-time basis for the New York Audio Team as a shopper. As such, my responsibilities include visiting various outlets for products made by James B. Lansing Sound, Inc. ("JBL") to determine whether such outlets are in compliance with the Fair Trade Law in the offer and sale of JBL products.
3. On Saturday, May 31, 1975, at about 7:30 p.m., I visited the premises of the defendant, Ultralinear Sound Corp., at 1117 Kings Highway, Brooklyn, New York. Shortly after

AFFIDAVIT OF FRANK GRAZIADEI IN SUPPORT OF MOTION

I entered, a salesman, whose name I can no longer recollect, came over to me. This salesman was a male caucasian approximately 6'3" in height, weighing about 200 lbs., with curly black short neatly cut hair and brown eyes. I told him that I was interested in purchasing speakers and a receiver and we discussed the relative merits of various brands of speakers. I asked him for the price of the JBL L-100 speakers. He quoted a price of \$470 per pair. Our conversation continued for some time thereafter. Toward the end of our conversation, the defendant, Eddie Antar, came up to us and I had a short conversation with him concerning another product.

4. At no time did I suggest any price to the salesman or Mr. Antar. The speakers which the salesman quoted to me were new speakers and were neither damaged nor being used as demonstration models.

AFFIDAVIT OF FRANK GRAZIADEI IN SUPPORT OF MOTION

5. At the time of the offer described above, I knew the fair trade minimum resale price of the JBL L-100 speakers to be \$318 per speaker or \$636 per pair.

Frank Graziadei
FRANK GRAZIADEI

Sworn to before me this
10th day of June, 1975.

Neal M. Coldman
Notary Public

NEAL M. COLDMAN
Notary Public, State of New York
No. 24 1450350
Qualified in Kings County
Commission Expires March 30, 1977

ANSWERING AFFIDAVIT OF EDDY ANTAR IN OPPOSITION TO MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JAMES B. LANSING SOUND, INC.,)	74 C 1180 (OGJ)
)	
Plaintiff,)	<u>Answering Affidavit</u>
)	
v.)	
)	
ULTRALINEAR SOUND CORP. and)	
EDDIE ANTAR,)	
)	
Defendants.)	

State of New York, County of Kings, ss.:

EDDY ANTAR, first being duly sworn, deposes and says that:

I am the manager of ULTRALINEAR SOUND CORP. the defendant named in the within action. I am fully familiar with all of the facts and circumstances herein and am fully competent to make this affidavit.

The motion presently before this Court is based upon false affidavits which have been submitted by the plaintiff. I have thoroughly investigated every aspect of the allegations stated therein before arriving at this conclusion. In fact, the defendant EDDIE ANTAR

ANSWERING AFFIDAVIT OF EDDY ANTAR IN OPPOSITION TO MOTION

was not even in the state of New York at the time the alleged violations of this Court's order were supposed to have taken place. However, the affidavit of FRANK GRAZIADEI places him at the corporate place of business in a most meager attempt to involve him in some sort of a violation so that this contempt proceeding can be brought on.

The foregoing conduct is not new to Mr. Goldman, the plaintiff's attorney, who has personally conducted a campaign of harassment against this corporation, its employees and other members of the Antar family in this and in other businesses. Mr. Goldman's strong arm tactics exemplify this campaign of harassment even at this eleventh hour as "fair trade" is headed towards oblivion.

Both defendants herein stand fully prepared and do request that this Court hold an open hearing on the question of contempt together with all substantive and procedural rights that may be granted parties in such cases.

ANSWERING AFFIDAVIT OF EDDY ANTAR IN OPPOSITION TO MOTION

WHEREFORE, it is respectfully requested that the Court set this matter down for trial forthwith, together with such other and further relief as may be just, proper and equitable.

S/ Eddy Antar
EDDY ANTAR

Sworn to Before me this

1st day of July, 1975.

S/ Solomon E. Antar
Notary Public

ORDER OF CONTEMPT DATED JULY 10, 1975.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK-----X
JAMES B. LANSING SOUND, INC.,

Plaintiff,

- against -

ULTRALINEAR SOUND CORP. and
EDDIE ANTAR,

Defendants. -----X

74-C-1180
FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ JUL 11 1975 ★

ORDER OF CONTEMPT
P.M.

This cause came on to be heard upon order to show cause why Ultralinear Sound Corp. and Eddie Antar should not be punished for contempt of court for failure to obey the final judgment hereof dated October 18, 1974, which enjoined said defendants from selling or offering plaintiff's products at less than the minimum fair trade resale prices. The court, upon a consideration of the matter and the papers upon which the order to show cause was based, and having heard testimony and oral argument, having made and entered its findings of fact and conclusions of law, and specifically having found that defendants, through their salesmen, offered on at least two occasions to sell plaintiff's Model L-100 speakers for less than their minimum fair trade resale prices; it is

ORDERED, ADJUDGED and DECREED:

1. That Ultralinear Sound Corp. and Eddie Antar are each in contempt of this court for having failed and refused to obey its Final Judgment of Permanent Injunction of October 18, 1974.

ORDER OF CONTEMPT DATED JULY 10, 1975

2. That Ultralinear Sound Corp. and Eddie Antar purge itself and himself of their contempt of the court by taking the following action:

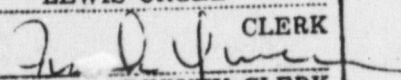
(a) Fully comply with all of the provisions of the court's Final Judgment of Permanent Injunction of October 18, 1974 so long as New York's fair trade resale price law remains in effect

(b) File with this court and with plaintiff's attorney by July 25, 1975, if New York's fair trade resale price law remains in effect after July 15, 1975, a sworn statement setting forth in detail the steps taken to avoid further violation of said Final Judgment; and

(c) Reimburse plaintiff for all costs of this litigation, including costs of investigation, preparation for and... conduct of this proceeding, reporting fees, and reasonable attorneys' fees by paying to plaintiff the sum of \$850.00 within five days after service of a copy hereof upon defendant's counsel.

Dated: Brooklyn, New York
July 10, 1975


ORRIN G. JUDD
United States District Judge

A TRUE COPY	
ATTEST	
DATED	July 14 1975
LEWIS ORGEL	
CLERK	
By	
DEPUTY CLERK	

TRANSCRIPT.

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

4 -----X
5 LANSING SOUND, INC.,

6 Plaintiff,

7 -against-

8 ULTRALINEAR SOUND CORPORATION,

9 Defendant.
10 -----X

11 United States Courthouse
12 Brooklyn, New York
13 July 3, 1975

14 11:10 o'clock a.m.

15
16 B e f o r e :

17
18 HONORABLE ORRIN G. JUDD, U.S.D.J.
19
20
21
22
23

24 WINFRED D. LEWIS
25 OFFICIAL COURT REPORTER

Appearances:

N. M. GOLDMAN, ESQ.,
Attorney for the plaintiff

SOLOMON ANTAR, ESQ.,
Attorney for the Defendant

1
2 THE CLERK: Civil hearing: Lansing Sound,
3 Inc. against Ultralinear Sound Corporation.

4 MR. GOLDMAN: Ready for the moving party.

5 THE COURT: All right, Mr. Goldman.

6 And Mr. --

7 MR. ANTAR: Antar, your Honor.

8 THE COURT: -- Antar.

9 MR. GOLDMAN: Your Honor, before commencing
10 with the witness I would just like to state for the
11 record my objection to the fact of a hearing on the
12 grounds that the opposing affidavit, I submit, fails
13 to raise an issue.

14 THE COURT: This is not a motion for summary
15 judgment. This is a motion for a preliminary
16 injunction.

17 MR. GOLDMAN: I understand.

18 Well, it is a motion to hold in
19 contempt, your Honor, but still and all I submit
20 that the --

21 THE COURT: Well, that's even more serious.

22 MR. GOLDMAN: All right, I have made my state-
23 ment.

24 THE COURT: Yes.

25 MR. GOLDMAN: I call my first witness,

Mr. Frank Graziadei.

FRANK GRAZIADEI, called as
a witness herein, having been first duly sworn by the
Clerk of the Court, was examined and testified as
follows:

DIRECT EXAMINATION

BY MR. GOLDMAN:

Q Mr. Graziadei, please keep your voice up so
that the gentlemen at this table as well as the people in the
back of the room can hear what you have to say.

Where do you reside?

A 1614 West First Street, Brooklyn, New York.

Q Keep your voice up.

A 1614 West First Street, Brooklyn, New York.

Q What is your business?

A I am a shopper for JBL Harmon-Kardon and I am
a student at Fordham Law School.

Q Where, sir?

A At Fordham Law School.

Q Talk to me, perhaps everybody can hear it.

How long have you been employed by JBL

Harmon Kardon?

A Since last June.

Q Pardon?

1

2

A Since last June.

3

Q What are your duties?

4

5

6

7

A Well, basically I go into each store. I ask the price on a system, on a stereo system. I look and see the displays, the attitude of the salesman and basically, that's it.

8

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Q Are you given any instructions by the people at JBL or Harmon-Kardon in connection with the performance of your duties?

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A Well, we have several instructions, such as: You walk into a store, introduce yourself, try to obtain a business card from the salesman you are speaking to, ask the price of the JBL speakers, never give the name of another store or try to bait a salesman in any way or, in other words, try to get the price lower and ask the price of a complete system and ask the price of the JBL speakers alone.

19

20

21

Q How are you compensated for your employment?

A I receive \$5.00 a store and I think -- and ten cents a mile.

22

23

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Q Now, Mr. Graziadei, do you recall an occasion on May 31, 1975, visiting the premises of the defendant here, Ultralinear Sound Corporation?

A Yes, I do.

Graziadei - direct

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Q Approximately what time of day was that?

A It was around 7:30 at night.

Q Did you go alone or with someone else?

A I went with a friend.

Q Please tell the Court what transpired on the occasion of that visit?

A Well, the friend and I walked into the store, he went to the downstairs part where they sell in-car sets for car units. I went up stairs to get a price on a stereo system. I was shopping for the JBL 100s at the time. So I met a salesman. I do not recollect his name.

I shook hands with him, I introduced myself. I told him I was looking for the Pioneer 626, I believe the dual -- the dual 1226 or 1229 turntable and I said I wasn't sure about the type of speakers but I was interested in the JBL 100s. I would like to hear them, listen to them.

Well, he tried to sell me a brand called Acuphase and we discussed the merits of the JBL 120100s and the Acuphase and at that time, I obtained the numbers of the JBL speakers as I was talking to him and at that time I got a price of 475 for the JBL speakers.

Q From whom did you obtain this price?

A From the salesman himself.

Q Mr. Graziadei, you made an affidavit in this

Graziadei - direct

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2 action, did you not?

3 A Yes, I did.

4 Q I am going to show you a copy of the document
5 and ask you if you can identify it.

6 A Yes, this is it.

7 Q And you are referring to the affidavit that's
8 appended to the order to show cause?

9 A Right.

10 Q You will notice at the bottom of the first
11 page it says that he quoted a price of \$470?

12 A Right.

13 Q Which is correct, sir, 470 or 475?

14 A 475 is correct.

15 Q Can you explain the discrepancy between your
16 testimony now and the affidavit?

17 A Yes, I can. When I filled out the affidavit
18 I knew it was in the area of 470, 475 and I did not have my
19 shopping form with me. I filled out the affidavit I believe
20 it was in June. I shopped the store on May 31st, so I could
21 recollect whether it was 470 or 475, but I knew it was in
22 that area.

23 It was well below the fair trade price.

24 Q By the way, Mr. Graziadei, can you describe
25 for us the salesman with whom you spoke?

8

Graziadei - direct

8

A Well, I would say he was around six foot three, heavy set, 200 pounds and curly brown hair, neat -- it was neatly combed. It wasn't long, it was short.

Q Is the gentleman present in the courtroom today?

A I think he's right back there if he takes off his sunglasses.

Q This gentleman (indicating)?

A Yes, I think that's him.

MR. GOLDMAN: For the record, your Honor, may we inquire of the gentleman his name so that he may be pointed out?

THE COURT: Mr. Antar, do you know the name?

MR. ANTAR: Howard Schreiber.

THE COURT: Elwood Schreiber?

MR. ANTAR: Howard Schreiber.

BY MR. GOLDMAN:

Q Have you given us your recollection of the conversation between you and the salesman?

A Well, I approached him, I said --we exchanged names. I told him I wanted definitely the Pioneer and the dual and I wasn't sure, like, I said, on the speakers, and I wanted to listen to them and which ones would he recommend.

I think I wanted JBL, I told him, so he tried

Graziadei - direct

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2 to push the Acuphase on me. He said they were a cheaper
3 speaker and JBL had a flat mid-range.

4 I asked him what was the price of the JBL
5 speakers and he said they were 475 at which point I stopped
6 asking him the price of it because my function -- well, he
7 had violated the Fair Trade Law at that point.

8 And we continued the conversation about
9 Acuphase versus JBL. And we entered the next room and he
10 showed me a JBL speaker that was blown out and he said that
11 they could blow out, that they haven't changed their construc-
12 tion in years and our conversation virtually ended.

13 I was listening to one of the JBL speakers
14 on the inside room, had gotten that serial number. We walked
15 outside through the glass doors. My friend came up from
16 upstairs -- from downstairs and he was interested in buying
17 the Kenwood and they were talking to one another about the
18 Kenwood. I think it was a 6400 or 4400. I don't remember
19 which.

20 I remember the price the salesman quoted him,
21 225 for the Kenwood. My friend says, well, he could get it
22 for 215, and the salesman turned to this other guy who I
23 thought was Eddie, at the time. He had a brown beard and
24 he asked him, he said, "Well," he says, "he can get it for
25 215."

Graziadei - direct

10

And so the brown beard says, "Where can he get it?"

My friend told him and he said, "All right, he can have it for 215, if he puts a deposit on the it tonight or buys it tomorrow or tonight."

Q Did the second gentleman, the gentleman you said you thought was Eddie, identify himself?

A No, he didn't.

Q Why did you conclude that that was Eddie?

A Well, I presumed it was him because the salesman was asking him for an okay whether he could charge -- give him -- give him the unit for 215. He was asking for a price from him. He seemed to be in authority in the place.

Q And is the gentleman, that second gentleman that you spoke to, present in the courtroom today?

A No, sir, he is not.

Q How long were you in the store at 1117 Kings Highway on that occasion, sir?

A I would say I was in at least 35 minutes. I was in there a good deal of time.

Q Did you subsequently make a written report of this visit to JBL?

A Yes, I did.

Graziadei - direct

11

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2 Q When did you make that report?

3 A When I -- well, as I left the store and after-
4 wards. I went downstairs and I left the store, had my car
5 parked across the street on Kings Highway. I got in the car
6 and I started filling out the form.

7 Q Right then?

8 A Right then.

9 Q I am going to show you a document which I would
10 like to have marked for identification as Plaintiff's
11 Exhibit 1.

12 THE CLERK: Three-page document marked
13 Plaintiff's Exhibit No. 1 for identification.

14 (So marked.)

xx 15 BY MR. GOLDMAN:

16 Q Can you tell us what Plaintiff's 1 for identi-
17 fication is?

18 A This is the shopping form which the JBL
19 shoppers are required to fill out.

20 Q Is that the original form?

21 A No, this is a copy of it. I think. Yes, this
22 is a copy.

23 MR. GOLDMAN: Your Honor, I will offer it at
24 this time.

25 THE COURT: Any objection?

GRaziadei - direct

12

MR. ANTAR: No objection, your Honor.

THE COURT: All right, let it be marked.

THE CLERK: Plaintiff's 1 marked in evidence.

MR. GOLDMAN: I have no further questions
of this witness.

(So marked.)

THE COURT: All right.

Any cross-examination?

CROSS-EXAMINATION

BY MR. ANTAR:

Q Mr. Graziadei --

A Yes.

A -- how long did you say you were a shopper?

A I have been a shopper since last June.

Q Can you tell me approximately how many stores
you shopped since last June?

A Since last June?

Okay. 66 -- I would say I have shopped around
50 stores.

Q Are you given instructions pertaining to
each specific store that you shop?

A No, I have been -- I receive general instruc-
tions.

Q Included in your general instructions, is there

Graziadei - cross

13

1
2 a direction to make a purchase?

3 A In each store? No. It's -- my general
4 instructions are to go into a store and find a price on a
5 system, a price -- a price on whatever item I am shopping
6 for.

7 Q Do you ever attempt to make a purchase?

8 A Have I?

9 Q Do you ever attempt to make a purchase?

10 A With money? No, I do not.

11 Q Do you ever attempt to get a written quotation?

12 A Yes, I do.

13 Q Did you get a written quotation at the time
14 you were at the premises of Ultralinear Sound Corporation
15 on May 31st of 1975?

16 A I asked for it.

17 Q Did you receive one?

18 A No, I did not.

19 It was told --

20 Q Did you receive any sales receipt?

21 A No, I did not. I did not make a purchase.

22 Q Did you leave any deposit on any merchandise?

23 A No, I did not.

24 Q Did you attempt to leave a deposit?

25 A No, I did not.

Graziadei - cross

14

Q Before entering the premises, did you have it in mind that there is a possibility that a salesman could make a mistake?

A Did I have it in mind? Yes.

Q Did you have it in mind?

A Yes, it's possible.

MR. GOLDMAN: I object, your Honor.

THE COURT: Overruled.

BY MR. ANTAR:

Q You did know that you would subsequently execute a written report, did you?

A Yes.

Q And possibly an affidavit?

A Well, this is the first affidavit I have ever submitted.

Q When you signed this affidavit, did you know that it would be used in a contempt proceeding?

A Yes.

Q Well, then can you answer me what precautions you observed to rule out the possibilities of mistake?

A Well, at the time I was instructed to go to Mr. Goldman's office to read over the affidavit which was prepared for me.

Q No, I am speaking when you entered on the

1
2 premises.

3 A Oh, when I walked into the store I -- I followed
4 the normal procedures which I followed instructions of the
5 JBL Harmon-Kardon Shopping Guide, the instructions I was
6 given.

7 When I left the store, I wrote down immediately
8 the shopping form; I filled it out immediately so I wouldn't
9 be mistaken as to price or the identity of the salesman.

10 Q Well, referring to your affidavit, Mr. Graziadei,
11 did you state in the affidavit that you went into the store
12 with a friend?

13 A Yes, I did.

14 Q You did?

15 A Yes. I think I did.

16 Q Did you state in the affidavit that your friend
17 went downstairs and you went upstairs?

18 A No -- excuse me, no, I did not. No.

19 Q I refer you to the affidavit that you identified--

20 A Okay.

21 Q -- that you signed.

22 Will you look it over.

23 A Okay.

24 Q I will rephrase that question now:

25 Did you state in that affidavit that you went

1
2 into the store with a friend?

3 A No, I did not.

4 Q Then you were mistaken?

5 A As to that, yes.

6 Q Thank you.

7 Did you state in the affidavit that you went
8 upstairs and your friend went downstairs?

9 A No, I did not.

10 Q Did you state in your affidavit that there may
11 have been a discrepancy in price?

12 A I don't understand your question.

13 Q Between the \$470 that you stated in the
14 affidavit and the \$475 that you say the price you received
15 was, did you state that there might be a discrepancy in
16 price?

17 A No, at the time I filled out the affidavit, at
18 the time I signed it I said the price was in the 470-475
19 dollars range. I did not have my shopping form with me at
20 the time.

21 Q I see.

22 Did you state in the affidavit that you were
23 discussing other speakers and refer to the speakers?

24 A I think I stated that I -- I discussed other
25 products.

Graziadei - cross

17

1
2 Q And you did state in the affidavit most
3 affirmatively, am I correct, "Toward the end of our conver-
4 sation the defendant Eddie Antar came up to us and I had
5 a short conversation with him concerning another product."

6 That is sworn to in the affirmative, is it
7 not?

8 A Yes, it is.

9 Q But that is a mistake, also?

10 A Yes, the person whom I thought was ~~Grasie~~
11 Eddie. Eddie --

12 Q So there are possibilities of mistake, are
13 there not?

14 A Concerning those --

15 Q There are possibilities that you can make
16 a mistake?

17 A Of course, everybody is human.

18 Q However, you did know that this affidavit
19 would be used to hold Mr. Eddie Antar in contempt of court--

20 A Yes.

21 Q -- when you signed it? And the only precautions
22 you took to avoid a mistake was just to follow whatever
23 instructions you were armed with, am I correct?

24 A No, I -- like I said, I filled out the form
25 after -- immediately after coming out of the store, I went

Graziadei - cross

18

1
2 to Mr. Goldman's office. I read over the affidavit and I
3 signed it.

4 Q But you did identify the wrong person in the
5 affidavit?

6 A Yes, I did.

7 I described him, he has a -- the person I
8 said I was talking to had a beard.

9 Well, could there also, likely, be a mistake
10 in the price that you heard?

11 A Brown.

12 No, there could not.

13 Q Oh, you say you spoke to someone with a beard?

14 A No, I spoke to that person over there, I
15 think (indicating).

16 Q I know, but you said Eddie Antar was a gentleman
17 with a beard.

18 A The person, like I said, I was speaking to
19 was a person with -- with a beard, later on at the end of
20 the conversation.

21 Q Well, did you put it down in the affidavit that
22 this man had a beard?

23 A No, I did not.

24 Q But you did see fit in that affidavit to
25 describe the salesman "as a male, Caucasian, approximately

Graziadei - cross

1
2 six foot three inches in height, weighing about 200 pounds,
3 with curly black, short, neatly cut hair and brown eyes."

4 You noticed the color of his eyes, did you
5 not?

6 A Well, I was speaking to him for a good half
7 hour.

8 Q How long did you speak with the other gentle-
9 man, with the beard?

10 A I spoke to him for about two minutes.

11 Q You noticed his beard at the time, did you
12 not?

13 A It's the only thing I could recollect about
14 him, was the beard.

15 Q Now, where did all of this conversation take
16 place?

17 A Upstairs.

18 Q Can you physically describe the upstairs?

19 A Okay. You walk up, there is a stairs, the
20 floor carpet is red, they have a -- the first sound you
21 come into is lined with speakers on all walls, on the left
22 you have the Acuphase speakers and you have the JBL speakers,
23 inside the glass door you have several other speakers.

24 There is a JBL speaker down on the bottom.

25 Q What's the dimensions of the place,

1 approximately?

2 A Can I give it say in reference to this courthouse,
3 this room?

4 Q Yes, if that will help you.

5 A Okay, I would say about --the stairs would be
6 right here, the wall would be right about there. There
7 is a room in the back.

8 Q How many feet would that be, how many feet in
9 width?

10 A How many feet in width from here to there?

11 Q Can you approximate that?

12 A I would say around -- from here to this
13 bench, I would say close to six, twelve -- about fifteen
14 feet.

15 Q So you would approximate the upstairs as
16 fifteen feet in width?

17 A Close to it, from the stairway I would say, to
18 the far wall.

19 Q Were there speakers displayed there?

20 A On the far wall, yes.

21 Q About how many speakers?

22 A Let's see, they have -- I think there were
23 two or three shelves and there were speakers on each shelf.
24 One -- I would say about at least 30 speakers.
25

1
2 Q What other materials were displayed?

3 A Okay, on -- on the far wall, I am talking
4 about this dimension -- this is Kings Highway, this would
5 be Quentin Road. There were receivers. You have the Pioneer
6 receivers. Over here there is a glass door, you had the
7 Acuphase speakers.

8 You had the JBL speaker. There was another
9 JBL speaker, you had the glass doors, you walk through the
10 glass doors. You had, I think, one or two either --
11 two or three shelves. I am not really sure, you had a JBL
12 speaker on the bottom and there was a table -- there was
13 a table behind me.

14 Q Your recollection serves you well on this point,
15 does it not, there is no question about that?

16 A On what?

17 Q On where the JBL speakers were.

18 A Yes.

19 Q Where the Pioneer was. You recollect all of
20 this down to the detail, do you not?

21 A More or less, yes, I do.

22 Q But there are other things in the affidavit
23 that you do not recollect?

24 A Such as?

25 Q Or that you made mistakes on?

Graziadei - cross

22

1
2 A Well, I said the 470-475 I knew the price
3 was around 470-475.

4 Q Did you ever see flags, posters, advertisements
5 upstairs also?

6 A Yes, I saw an advertisement for the Acuphase.

7 Q What else did you see?

8 A Let me see what else was there in that store?

9 Q Did you see posters up there?

10 A I saw the Acuphase poster.

11 Q Did you see any posters up there?

12 A Which is on the wall as you enter the glass
13 door.

14 Q Did you see flags or posters or colored
15 material, decoration?

16 A I said the floor -- the floor was red. There
17 was another -- I think there was another poster as you walk
18 up the stairs, there was another poster up there.

19 I am not really sure.

20 Q Do you remember what that poster says?

21 A No, I do not. I only past it when I was
22 walking in and out.

23 Q Did you attempt to read any of the advertise-
24 ments on the posters?

25 A Yes, I read the Acuphase poster because --

1 Q Did you read the other posters?

2 A No, I did not.

3 Q Then you wouldn't know what the other posters
4 or advertisements said?

5 Q No, I could not tell you.

6 MR. ANTAR: Your Honor, may I refer to
7 Exhibit No. 1 in evidence.

8 THE COURT: Yes.

9 Q You executed this dealer shopping form when,
10 sir, when you were in the premises or when you had gotten
11 out to the car?

12 A As soon as I left the store and I went to my
13 car. I had it in my back pocket the whole time.

14 Q Did you execute any part of it upstairs?

15 A No. As I was going out in front of them,
16 no, I did not.

17 Q When you got into your car?

18 A As I left the store, as I walked to my car.

19 Q Did you start from the first page to the last
20 or the last page to the first? I point out to you that
21 it's a three-page form.

22 A The first thing I did was turn it over and
23 wrote down the serial numbers of the JBL sets.

24 Q You remembered all the --
25

Graziadei - cross

24

1
2 A I had one of them memorized. The other two
3 I had a dollar bill with me in the store and I wrote down
4 real fast.

5 Q Do you have that dollar bill with you
6 today?

7 A No, I don't. I spent it. But those were the
8 serial numbers.

9 Q But you spent the dollar bill, you don't have
10 it?

11 A No.

12 Q There is no chance then of making a mistake
13 on that?

14 A None whatsoever.

15 Q But you didn't see fit to turn that dollar
16 bill in to Mr. Goldman or your superior?

17 A No, I wrote --

18 MR. GOLDMAN: Objection, your Honor, it's
19 argumentative.

20 THE COURT: All right. Overruled.

21 BY MR. ANTAR:

22 Q Did you ever attempt to confirm any price
23 with the cashier?

24 A No, I did not.

25 You mean downstairs?

1

2

Q Yes.

3

A No, I did not.

4

Q Did your friends ever come upstairs with you?

5

A My friends came upstairs with me at the end of the conversation as we were talking about the Kenwood.

7

Q Did you state that in your affidavit?

8

A No, I did not.

9

Q Now, to quote your affidavit, you state that the salesman "quoted a price of \$470 per pair."

11

Can you tell me how he quoted the price of \$470 per pair?

13

A It was 475.

14

Q Well, in your affidavit, going to your affidavit -- I am not concerning myself with the \$5.00 difference, can you tell me how he quoted it?

17

A Sure.

18

Q What was the language he used?

19

A Okay, I will give you almost his exact conversation. As he was speaking about the JBL and the Acuphase I said, "Well, what's the price of the JBL speakers," because they go \$475; I said, "What's the price of the Acuphase give me the price, the Acuphase, " because they were cheaper and a better speaker, buy the Acuphase.

24

25

I said, "How much the JELs are?"

Graziadei - cross

26

He said, "475." He said it to me, at least.

Q Did he say 475 per pair or 475 each?

A Per pair.

Q I am asking you again.

A I asked him how much do the JBL speakers
cost.

Q You said speakers?

A Speakers.

Q Yet, you would admit there is a nuance
over here; is there not?

A I don't think so. I understood him perfectly
clear, 475 for the speakers.

Q May I ask why you didn't put it down in your
affidavit?

A I think -- if the affidavit, I could see it,
I think I said.

Q I quoted the affidavit, that he quoted a
price of \$470 per pair?

A Well, it was 470 per --

Q Sir, you are a law student, are you not?

A I am going to be entering in --

Q You knew this affidavit was going to be used
in a contempt --

THE COURT: You have asked him that twice

1
2 already.

3 Q Did you dictate this affidavit, sir?

4 A Mr. Goldman had called me up and I returned
5 his call to his office. And he told me they wanted me to
6 fill out an affidavit and he would like to know what had
7 happened the day I filled out the shopping form and I told
8 him basically over the phone what had happened as I had
9 stated it here and he said, "Well, fine, come in tomorrow,
10 you could read the affidavit and you can sign it and if
11 there is anything wrong with it, you can change it."

12 And I said, "Fine."

13 I went in the next day. I read the affidavit
14 and I signed it.

15 Q So these are not your words then?

16 A Did I write the affidavit?

17 Q Yes.

18 A No, I did not.

19 Q Did you receive any bonus in your work,
20 in salary?

21 A No, I do not.

22 Q Had you ever shopped this particular store,
23 before?

24 A Yes, I shopped it on last year, I believe,
25 in the summer.

Graziadei - redirect

28

MR. ANTAR: No further questions.

THE COURT: All right.

MR. GOLDMAN: One question, your Honor.

REDIRECT EXAMINATION

BY MR. GOLDMAN:

Q Mr. Graziadei, Mr. Antar asked you if you had sought a written report?

A Yes.

Q And you answered that you had?

A Yes.

Q What was the response of the salesman?

A He said there was none necessary, said all I had to do was come back.

MR. GOLDMAN: No further questions.

THE COURT: Mr. Graziadei, there is apparently something crossed out alongside, "Price Quoted," on the second page of Exhibit 1.

What was that?

A Over the 475, I drew a little thing like that. I just crossed it out, 475.

THE COURT: All right, you can step down.

Thank you.

(Witness excused.)

MR. GOLDMAN: My next witness is Mr. Lawrence

Fay.

Pay - direct

29

LAWRENCE FAY, called as a witness herein, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

THE WITNESS: Lawrence Fay.

THE COURT: You can sit here, Mr. Fay.

DIRECT EXAMINATION

BY MR. GOLDMAN:

Q Mr. Fay, I will ask you to talk to me so that I can hear you and then I am sure everybody else in the courtroom can hear you as well.

Are you employed, Mr. Fay?

A Yes.

Q What is your employment?

A I am a shopper for Harmon-Kardon JBL stereo.

THE COURT: What's the first?

THE WITNESS: Harmon-Kardon.

Q Do you go to school, Mr. Fay?

A Yes.

Q Pardon me.

Where do you live, sir?

A PlainView, Long Island.

Q Where do you go to school?

A Stonybrook University, State of New York.

Pay - direct

30

1
2 Q And what year are you in there?

3 A Going to be a junior this fall.

4 Q How long have you been employed by Harmon-
5 Kardon and JBL?

6 A Approximately six months.

7 Q What are your duties?

8 A I enter a store, inquire whether or not --
9 a price on what is given to me. For example, JBL 100
10 speakers, I am asked to shop the length of the store and
11 find out what the company is selling them for, whether or
12 not it's below Fair Trade Law or they are abiding by it.

13 Q Now, Mr. Pay, do you recall making a visit
14 to the premises of the defendant Ultralinear Sound Corpora-
15 tion on or about April 26, 1975?

16 A Yes.

17 Q Did you go by yourself or with a friend?

18 A By myself.

19 Q Approximately what time of day did you visit
20 that store?

21 A I believe it was around -- in the afternoon,
22 middle to later afternoon, I believe.

23 Q Please tell the Court in as detailed a fashion
24 as you can remember, what happened when you made the visit.

25 A I entered the store, walked upstairs. I believe

Fay - Direct.

31

1
2 it was a Saturday so it was -- it was very crowded. And
3 it was a -- a long wait, you know, to talk to a salesman.
4 I -- so I approached one of the salesmen and I inquired about
5 JBL speakers. He -- he said, you know, you should come
6 back, you know, because it was very crowded.

7 I said, "You know, I drove a long way in
8 here, you know, and so I inquired about the 100s and the 36s,
9 JBL 36s and I was -- I asked, "Can you give me a rough
10 price about what it would cost approximately?"

11 And he said it would cost approximate 500
12 for the 100s and 400 for the 36s.

13 Q At that time, Mr. Fay, do you know what the
14 price of the 136 speaker was?

15 A It was, I believe -- it was going for \$400 a
16 pair, or -- the 100 was going for \$600 a pair, JBL 100s,
17 and there was a quoted price of 500.

18 Q Can you describe the salesman to whom you spoke?

19 A Barry, it was -- in the back there, balding
20 red hair.

21 Q Do you see him in the courtroom?

22 A Yes.

23 Q Would you point him out, please.

24 Point him out by description, if you would.

25 A Red hair and mustache.

Fay - direct

32

1
2 Q The gentleman in the blue shirt?

3 A Yes, the gentlemen in the blue shirt.

4 MR. ANTAR: Barry Borris, your Honor.

5 Q How long were you in the store on that
6 occasion?

7 A Approximately 15 minutes with waiting and
8 talking to the salesman.

9 Q Did you have any further conversation with
10 him?

11 A No, as I -- as I said, it was very busy.

12 Q Did you make a report of this visit to JBL?

13 A Yes.

14 MR. GOLDMAN: Your Honor, I would like to
15 have this document marked Plaintiff's Exhibit 2 for
16 identification.

17 THE CLERK: Two-page document marked Plaintiff's
18 Exhibit 2 for identification.

19 (So marked.)

20 BY MR. GOLDMAN:

21 Q Mr. Fay, I show you Plaintiff's Exhibit 2 for
22 identification.

23 Can you tell me what that is?

24 A It's my shopping -- shopping form, which I
25 handed -- which I submit to Harmon Kardon -- to JBL.

Fay - direct

MR. GOLDMAN: Your Honor, I will offer it.

THE COURT: All right, let Mr. Antar look at it.

MR. ANTAR: No objection.

THE COURT: Mark it in evidence.

MR. ANTAR: May I have a voir dire on this?

THE COURT: All right.

VOIR DIRE EXAMINATION

BY MR. ANTAR:

Q Mr. Fay, approximately when did you execute this?

A After I had left the store.

Q How long after you left the store?

A Within an hour. I would say approximately about an hour.

Q Where were you when you executed this?

A I was in my car.

Q Did you know that this document was going to be turned in to JBL?

MR. GOLDMAN: Your Honor --

A Yes.

MR. GOLDMAN: -- I object.

It's improper voir dire.

THE COURT: I don't know what you mean by voir dire.

Fay - voir dire

34

1
2 Q Did you sign this document?

3 A Yes.

4 Q You did?

5 MR. ANTAR: No objection, Judge.

6 THE COURT: All right.

7 THE CLERK: Plaintiff's Exhibit 2 marked in
8 evidence.

9 (So marked.)

10 MR. GOLDMAN: I have no further questions
11 of this witness, your Honor.

12 CROSS-EXAMINATION

13 BY MR. ANTAR:

14 Q Mr. Fay, you said that it was very crowded
15 when you went into the premises, am I correct?

16 A Yes.

17 Q Did you state that in your affidavit?

18 A I don't -- not -- I don't recall.

19 MR. ANTAR: If I may, your Honor.

20 Q Is that your affidavit, Mr. Fay?

21 A Yes.

22 Q Does that refresh your recollection?

23 A Yes.

24 Q Can you tell me now if you stated in your
25 affidavit whether or not it was crowded?

Fay - cross

1
2 A I don't believe so.

3 Q Did you state in your affidavit that the
4 salesman told you to come back another time?

5 Did you state --

6 A No.

7 Q -- that in your affidavit?

8 A No.

9 Q Did you state in your affidavit that you told
10 the salesman that you drove a long way in?

11 A No, I don't believe so.

12 Q Did you tell the salesman you wanted to
13 purchase something immediately?

14 A No.

15 Q However, do I understand you correctly that
16 you just told this court that he said the price for two JBL
17 speakers were approximately \$500?

18 A Yes.

19 Q Is that what he told you?

20 A Yes.

21 Q Then he didn't give you a specific price?

22 A He said it would be approximately \$500.

23 Q Approximately. He said it was an approximate
24 price?

25 A Yes, that's approximately -- yes, approximately.

Fay - cross

36

1

2

Q Did you tell him you were just shopping?

3

A Excuse me?

4

Q Did you tell him you were just shopping?

5

A No.

6

Q Or you wanted to make an immediate purchase?

7

A No.

8

Q So then that was an approximate price he

9

gave you?

10

A Yes.

11

MR. GOLDMAN: Objection, your Honor, it's

12

repetitious.

13

THE COURT: Overruled.

14

Q Did you state that he gave you a price on two

15

JBL 36 speakers of \$400?

16

A Yes, I did.

17

He gave me a price of two JBL 36s at \$400.

18

Q Yes, I understand that.

19

A I know.

20

Q You are sure of that?

21

A I believe it was \$300.

22

Q Well, you just told us it's \$400.

23

A No, I was inquiring at what you had said,

24

I believe that, I was asking you, is that what you said,

25

\$400.

Fay - cross

37

1
2 Q I am not trying to confuse you, sir, I am
3 just trying to get this straightened out.

4 A Right.

5 I believe it was -- the -- the price, the
6 suggested price is \$400.

7 Q The suggested price?

8 A Excuse me?

9 Q The suggested? Suggested by whom, sir?

10 A Yes. JBL speakers, I have a price list, and
11 I believe the price for a pair is \$400 and I was offered
12 \$300.

13 Q Would you like the Court to refresh your
14 recollection by reading back your testimony on direct by
15 Mr. Goldman that you stated that the salesman offered you
16 two JBL speakers at \$400?

17 A Yes, I would like you to do that, because under
18 the pressure -- this is a new experience for me. I can get
19 confused very easily.

20 Q Well, did you discuss this with Mr. Goldman?

21 A It's pressure for me.

22 Q Did you discuss your testimony with Mr.
23 Goldman?

24 A Pardon me?

25 Q Did you discuss your testimony prior to coming
to this court with Mr. Goldman?

1

2

A Yes, I --

3

Q When did you discuss this testimony?

4

A I believe it was twice on two occasions.

5

Q When?

6

A Once when I went to sign the affidavit and

7

yesterday

8

Q And yesterday?

9

A I went in and --

10

Q Where was this yesterday?

11

A It was in Manhattan.

12

Q Where, at Mr. Goldman's office?

13

A Yes.

14

Q And did you go into detail of your testimony?

15

A Yes, we discussed it.

16

Q And did Mr. Goldman tell you how you were

17

to testify?

18

A No, he did not tell me how to testify.

19

Q Did he not tell you to testify to the truth?

20

A Yes, he told me to testify to the truth.

21

Q Referring to your exhibit, sir, you filled

22

out the statement when you left the premises?

23

A Approximately an hour, I think I said, after.

24

Q Is that when you signed it, also?

25

A Excuse me?

Fay - cross

39

1
2 Q Is that when you signed it?

3 A Yes, I believe so. I don't recall. I am
4 sure -- yes that's probably when I signed it. Seems
5 logical.

6 Q You didn't sign it in Mr. Goldman's office,
7 did you?

8 A The shopping form?

9 Q Yes.

10 A No.

11 Q You signed it?

12 A No, I had never seen Mr. Goldman till after I
13 had submitted the form.

14 Q Well, let me show you this and will you just
15 go through it and maybe it will refresh your recollection
16 as to when you signed it.

17 MR. GOLDMAN: I object, your Honor, I don't
18 think the witness testified that he didn't have a
19 recollection. I think he testifies clearly --

20 THE COURT: Let him look at it.

21 THE WITNESS: I believe I signed it at the --
22 approximately -- I believe I signed it when I filled
23 out the rest of the form. That would seem logical.

24 From --

25 BY MR. ANTAR:

1
2 Q Can you show me where you signed it?

3 A I didn't sign it.

4 Q Oh, you didn't sign it?

5 A No, I didn't.

6 Q Oh.

7 You have made a mistake?

8 A You have led me to believe something which
9 wasn't true.

10 Q Yes, in other words, I lied to you?

11 A Yes, I would say so.

12 Q Yes, thank you.

13 There is no possibility that you can make a
14 mistake, sir?

15 A There is, at times.

16 Q There is at times; that you are not infallible?

17 A Right.

18 Q How about describing the upstairs of the
19 premises of Ultralinear Sound Corporation.

20 A I could not give you -- I could not give you
21 a perfect description due to --

22 Q Approximately.

23 A All stereo stores are the same, approximately,
24 it is not unique. It would be difficult to describe it,
25 exactly.

1
2 Q Well, try, sir.

3 A I know you go up steps, walk up the stairs
4 to your left; walking to your left is stereos against the
5 wall and then when that wall ends you take another left,
6 you walk into a different sound room, I believe.

7 Q What's the size of it?

8 A Size? I couldn't -- I couldn't give you --
9 it's maybe about -- there -- I couldn't give you an accurate
10 description.

11 Q You couldn't approximate size?

12 A No, I couldn't.

13 Q The say you can't approximate price, either?

14 A I can approximate price.

15 Q But you can't approximate size?

16 A I am not told the size. If you told me the
17 size then I could approximate it for you but he told me a
18 price.

19 Q Well, is it 200 feet? Is it twice the size
20 of this courtroom?

21 A I was not approximating the price, I was
22 given the price. If I was approximating it it would be
23 different than what he was approximating it.

24 Q Is the upstairs twice the size of this
25 courtroom?

Fay - cross

42

1
2 A Oh, no, no. It's maybe a quarter -- maybe
3 if you cut out about a quarter, it may be a quarter of
4 it, approximately.

5 Q How many speakers would you say were on display,
6 sir?

7 A It was a good--

8 Q How many?

9 A There was a large -- a large -- there was
10 a large number of speakers.

11 Q A large number?

12 A Yes.

13 But I couldn't give you a quote.

14 Q Did you see signs, posters, decorations?

15 A I don't recall anything which shocked me.
16 You know, anything unusual.

17 Q Did you look?

18 A Did I look?

19 Q Yes.

20 A I do look around because I am supposed to
21 describe the appearance of the store and things of that
22 sort. That would be why I would look.

23 Q Did you read any posters, advertisements,
24 flags or signs?

25 A No, not that I can recall.

Pay -cross

43

1
2 Q You don't recall them or you don't recall
3 reading them?

4 A I don't recall reading anything of interest.

5 Q But you do recall that there were things
6 hanging up?

7 A I don't recall. I said, I don't recall.

8 Q You don't recall?

9 A I said, I don't recall things hanging up.

10 Q How do you know that on April 26, 1975, the
11 minimum fair trade resale price for the L100 speakers
12 were that which you state in your affidavit?

13 A I have a -- a price sheet.

14 Q By whom are you furnished that price sheet,
15 sir?

16 I Who furnished me it?

17 Q Yes.

18 A JBL, my employer; JBL.

19 Q Before you entered into the premises, did you
20 entertain the thought that you could make a mistake?

21 A Did I entertain the thought that I could make
22 a mistake? I did not entertain the thought that I could
23 make a mistake in terms of what I was doing at the present
24 time. No, I did not.

25 Q But you can make a mistake, can you not?

1
2 A It's a matter of listening and I believe --
3 there was enough, I was able to hear him properly, you
4 know, I have no deaf hearing.

5 Q Did you attempt to make a purchase, sir, to
6 confirm what you heard?

7 A Did I attempt to make a purchase? No, I was
8 not required to.

9 Q How many shops have you shopped within the
10 last six months?

11 A I couldn't -- I couldn't say for sure.
12 Approximately, I would think, maybe up around a hundred.
13 Less than a hundred, I would say.

14 Q When were you first given instructions as to
15 Ultralinear Sound Corporation?

16 A When was I given instructions?

17 A When were you given instructions?

18 A Approximately a day, two days before, I got in
19 the mail, I was supposed to go into see Crazier Eddie -- into
20 your place.

21 Q You received this in the mail?

22 A Yes, in the mail.

23 Q Did you have any verbal contact with anyone?

24 A Do I have verbal contact?

25 Q Did you, at that time, have any verbal contact

1
2 or receive any verbal instructions from anyone?

3 A No. It's done through the mail unless I have
4 a question or a problem, which I will call in.

5 Q Were you told to confirm anything with a
6 receipt?

7 A No, I wasn't buying anything.

8 Q In other words, you were just relying upon
9 your recollection?

10 A It's no recollection, I wrote it down. It's
11 -- it's a matter of maybe an hour.

12 Q You wrote it down where, sir?

13 A I --

14 Q You wrote it down where, sir, let me stop you
15 there. You wrote it down where?

16 A I wrote it down on the shopping form.

17 Q On the paper you signed or that you stated
18 you signed?

19 A Yes.

20 MR. ANTAR: I have no further questions.

21 MR. GOLDMAN: I have no questions.

22 THE COURT: Let me see the form.

23 Mr. Fay, who wrote your name at the top of the
24 form?

25 THE WITNESS: My name is wrote out by the

1
2 person who sends this to me.

3 THE COURT: Oh, I see. All right.

4 You can step down.

5 (Witness excused.)

6 MR. GOLDMAN: One further witness, your Honor,
7 for the purpose of exact prices.

8 I call to the stand, Mr. Burt Brooks.

9 (continued next page.)
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Brooks - direct

47

1
2 BURT BROOKS, called as a witness
3 herein, having been first duly sworn by the Clerk
4 of the Court, was examined and testified as follows:

5 THE CLERK: State your full name.

6 THE WITNESS: Burt Brooks.

7 THE COURT: All right, you can sit down.

8 Mr. Brooks.

9 DIRECT EXAMINATION

10 BY MR. GOLDMAN:

11 Q Mr. Brooks, by whom are you employed?

12 A JBL.

13 Q In what capacity?

14 A As Eastern Regional Manager for the Harmon
15 International Audio Teams.

16 Q Mr. Brooks, are you aware of the minimum fair
17 trade resale prices for JBL prices in the State of New York--

18 A Yes, I am.

19 Q -- on or about April 26, 1975?

20 A Yes.

21 Q Can you tell me the price for the L36
22 speaker at that time?

23 A \$198.00.

24 Q Per speaker?

25 A Each. Each. That's correct.

Brooks - Direct

48

Q Are you aware of the prices on or about May 31, 1975?

A On that particular product, identical.

Q The L36?

A Identical.

Q As of April 26, 1975, what was the price for the L100 speaker?

A \$227.00.

Q And on May 31, 1975, what was the price for the L 100 speaker?

A \$318.00.

Q Mr. Brooks, had the price for the L 36 changed at any time?

A At any time?

Q Yes.

A A year ago, in May of 1974.

Q What was the price in May of 1974 for the L36?

A For the L36?

Q Yes.

A The L36 was not available at the time.

Q When did it become available?

A In the Fall of 1974.

Q And what was the price at that time?

1 A The same price as it is today, \$198.00.

2 Q So at no time did the price for the L36 change?

3 A No, it did not.

4 Q The price, however, for the L100 changed,
5 from time to time?

6 A Yes, it had.

7 Q What was the price for the L100, say, last
8 September? September, 1974?

9 A \$297.00.

10 Q And that was increased when?

11 A May 1st, 1975.

12 MR. GOLDMAN: I have no further questions
13 of this witness, your Honor.

14 THE COURT: Any cross-examination?

15 CROSS-EXAMINATION

16 BY MR. ANTAR:

17 Q Sir, do you have your records with you today
18 in court?

19 A Yes.

20 Q Between the L100 -- please correct me --
21 the price changed between the period from April 26, 1975
22 and May 31st, 1975, between that period, am I correct?

23 A Yes.

24 Q That would be within about a thirty-day
25

1
2 period?

3 A Yes.

4 Q Will you examine your records, sir, and
5 tell me whether or not you afforded Ultralinear Sound
6 Corporation notice of this price change?

7 A Not to my recollection directly, no.

8 Q Well, can you look at your records. Maybe
9 that will help you, assist you in your recollection.

10 A I don't believe we have documentation to that
11 effect.

12 Q Well, do you know whether or not you afforded
13 Ultralinear Sound Corporation notice of this price change?

14 A No, I do not.

15 Q You do not know or you did not afford notice?

16 A I do not know.

17 Q So that it is possible that Ultralinear did
18 not have notice of this price change; is that correct?

19 A It is.

20 MR. ANTAR: I have no further questions,
21 your Honor.

22 THE COURT: All right, you are excused.

23 (Witness excused.)

24 MR. GOLDMAN: Your Honor, I would conclude my
25 case by asking the Court to take notice of the

1
2 permanent injunction signed by your Honor on October
3 18, 1974. I would make a proffer of proof -- I
4 don't know if your Honor deems it necessary to swear
5 me and have me swear to the truth of my affidavit,
6 which includes recital of facts relating to service
7 of the injunction and a warning concerning violation
8 of the injunction which I personally gave the --

9 MR. ANTAR: We will consent to that, your
10 Honor, as we did consent to the injunction, sir.

11 THE COURT: Yes.

12 MR. ANTAR: But we didn't consent to receiving
13 notices of any price changes.

14 THE COURT: Yes, all right.

15 MR. GOLDMAN: All right, then I would merely--

16 THE COURT: I take notice of the injunction
17 and the fact that it is the original here in court
18 that is signed by Eddy Antar.

19 MR. GOLDMAN: Yes, your Honor, I think he
20 signed personally and also there is a signature
21 on behalf of the corporation.

22 I don't have that in front of me at the moment
23 but I believe that that's so.

24 THE COURT: Solomon Antar.

25 MR. GOLDMAN: I would also ask the Court to

1
2 take my statement concerning attorney's fees in
3 this matter.

4 If your Honor wants it under oath I will be
5 sworn and give you testimony on that point. I have
6 made a sworn statement in the affidavit with respect
7 to attorney's fees incurred up to that point.

8 There have been attorney's fees incurred since
9 that point, the amount of which I would have to put
10 in the record.

11 THE COURT: All right, what do you say it should
12 be?

13 MR. GOLDMAN: There should be an additional
14 \$350 in addition to the \$500 set forth in the affa-
15 davit relating to the time I spent appearing before
16 the Court, the time I spent -- the other day, the
17 time I spent preparing the witnesses and the time
18 involved in this hearing this morning.

19 THE COURT: All right, thank you, I think
20 that's simply a matter of what the office practice
21 is on your fees. I don't think I need testimony
22 on it.

23 That's all you have then?

24 MR. GOLDMAN: Yes, your Honor.

25 THE COURT: All right, Mr. Antar, let's hear

Antar - direct

53

1
2 your case.

3 MR. ANTAR: Mr. Eddy Antar, please take the
4 stand.

5 E D D Y A N T A R , called as a
6 witness herein, having been first duly sworn by the
7 Clerk of the Court, was examined and testified as
8 follows:

9 THE CLERK: State your full name.

10 THE WITNESS: Eddy Antar.

11 THE COURT: All right, sit here, Mr. Antar.

12 DIRECT EXAMINATION

13 BY MR. ANTAR:

14 Q Mr. Antar, are you a principal of Ultralinear
15 Sound Corporation?

16 A I am.

17 Q And are you also the manager of the corporation?

18 A I am.

19 Q Can you tell me whether or not on or about
20 January 12th, 1975 you received a letter from Mr. Neal
21 Goldman asking you to adhere to the fair trade prices
22 of the JRS. products?

23 A I did.

24 Q Did you write to Mr. Goldman in response
25 thereto?

5

Antar - direct

54

A I sent him a letter back.

Q Do you have a copy of that letter in court with you today?

A Yes.

Q Will you read it for the record?

MR. GOLDMAN: I will object, your Honor.

THE COURT: No, I will hear it.

I don't know what it proves.

Q Will you read that letter for the record, Mr. Antar.

A It's addressed to "Neal M. Goldman, Esq.," -- do you want me to give you the whole address?

THE COURT: No.

Just read the letter.

THE WITNESS: Dear Mr. Goldman, I have investigated the allegations of your letter of January 20th, 1975 and have advised the Crazie Eddie Store in Syosset of our every intention of adhering to JBL's fair trade schedule and secured their concurrence with this policy. The salesman there advised me that he has always quoted full price, -- with the exception of closing out used or damaged goods. In any event, I advised him to take special precautions in adhering to JBL fair trade price in the future.

Antar - direct

55

1
2 "To allow for objective and non-biased claims
3 of future violations, might I suggest your shoppers
4 actually purchase or place a deposit on goods
5 allegedly offered in violation of your schedules.
6 Without such, we are all at the mercy of the shopper's
7 presumptions, misconceptions, recollections and
8 conclusions of what is being "offered," including
9 model number, price and condition of product.

10 "On the other hand, a sales receipt is not
11 subject to the same attack.

12 "Very truly yours, Eddy Antar."

13 BY MR. ANTAR:

14 Q Now, Mr. Antar, --

15 MR. GOLDMAN: Your Honor, before counsel goes
16 on, I would like to move on the record to strike
17 the testimony as being self-serving and irrelevant
18 to the issue now before the Court.

19 THE COURT: Well, I will deny the motion but
20 I have some question about how much it proves.

21 MR. ANTAR: I think, your Honor, Mr. Goldman
22 will not deny receiving the letter.

23 THE COURT: No, I don't think that poses any
24 obligation on him to comply with the evidentiary
25 rules that the defendant was trying to lay down.

Antar - direct

56

1
2 Q Now, Mr. Antar, can you tell me whether or
3 not you do discount any products in your store such as,
4 more specifically, JBL products?

5 A Only on demonstration models.

6 Q Will you explain to me what a demonstration
7 model is?

8 A It's speakers that are placed out on the floor,
9 used a week, two weeks, sometimes a month before we sell them,
10 they get scratched, they get damaged and we sell them off the
11 floor as demonstration models.

12 Q How many demonstration models would you say
13 of JBL are on the floor -- oh, I will retract that.

14 After sending that letter was there anything
15 else you did?

16 A Yes, I -- I made sure I had a meeting with all
17 my salesmen.

18 Q Yes.

19 A And made sure to tell them that they were
20 not to sell any JBL products below the -- the fair --fair
21 trade schedule.

22 Q Is there any place in the store where
23 you keep these demonstration models?

24 A In the sound room, in one corner of the sound
25 room.

Antar - direct

1
2 Q And have you given notice to the public about
3 the condition of these speakers?

4 A Yes, we have a sign that -- not specifically
5 JBL, any -- any floor model that can be sold-- which is
6 sold off the floor is sold below the -- whatever price we
7 can get for it.

8 Q I show you this sign, Mr. Antar.

9 A That's it.

10 Q Can you identify that?

11 A Yes, that's the sign we have posted in the
12 sound room.

13 Q Is this the very sign you have over there?

14 A Yes.

15 Q How long has this sign been posted in
16 your --

17 A Since about the middle --

18 Q --sound room?

19 MR. GOLDMAN: I would object, your Honor,
20 the document is not in evidence, nor is it binding.

21 THE COURT: Let's find out first about it.

22 MR. ANTAR: I will offer this in evidence,
23 your Honor.

24 THE COURT: Show it to Mr. Goldman.

25 MR. GOLDMAN: I will object, your Honor.

Antar - direct

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It is -- it's clearly hearsay as to this plaintiff.

THE COURT: No, it's a part of what he says is up there. I will receive it.

THE CLERK: Sign marked Defendant's A in evidence.

(So marked.)

BY MR. ANTAR:

Q Will you read that sign, sir?

A "Crazie Eddie's Discount on All Demonstration Models Greatly Reduced. Ask for Our Lower Prices. Some Slight Irregularities."

Q Now, was this sign posted in the sound room?

A Yes, it was posted in the sound room on -- on the wall.

Q Was it posted there on April 26th, 1975?

A It was. It was posted earlier than that.

Q Was it posted there on May 31st, 1975?

A It was.

Q Do you dispose of your damaged stock by giving a discount on price?

A We do.

Q How about JBL models that are new?

A We get full list price, when -- when they are available.

1
2 Q Do you discount JBL products whatsoever
3 when they are new?

4 A No.

5 Q Now, if a customer were to come in the store
6 and obtain a price on a particular item from the salesman,
7 can you tell me your method of conducting business and
8 making the sale?

9 MR. GOLDMAN: Your Honor, I will object to
10 the question as being hypothetical.

11 THE COURT: Overruled.

12 THE WITNESS: Well, do you mean when a sales-
13 man waits on a customer; is that what it is?

14 Q Yes.

15 A Yes, he waits on the customer, tries to suit
16 his system or whatever the customer's taste, and then he
17 brings it down to the cashier to have the prices verified
18 and if they are okay, the sale goes through.

19 Q Do you instruct the cashier to verify all
20 prices?

21 A Definitely.

22 Q Have there ever been any mistakes?

23 A Sometimes. Very seldom.

24 Q Could you at any time ever have sold a new
25 JBL speaker for below the fair trade price since the issuance

Antar - direct

60

1 of the injunction order?

2 A No. That's since last October? Right? No.

3 MR. ANTAR: I have no further questions.

4 THE COURT: All right, you may cross-examine.

5 CROSS-EXAMINATION

6 BY MR. GOLDMAN:

7 Q Mr. Antar, how many new JBL L100s have you
8 sold between last October and today?

9 A Not very many.

10 Q How many?

11 A I couldn't answer. JBL dried up our sources
12 of supply.

13 Q Mr. Antar, do you have any records, do you
14 keep your receipts?

15 A Sales records, sure.

16 Q And you have it with you today?

17 A No.

18 Q To evidence prices at which you sold these
19 good?

20 A No.

21 Q What do you write on the receipts?

22 A Whatever the item the customer buys.

23 Q And the prices for them?

24 A Item price -- Item price and --
25

1
2 Q Do you know the price at which you sold the
3 not many JBL L00 speakers?

4 A I am not too familiar with the prices that --
5 what do you mean, you are talking about --

6 Q Well, you say you sold "some".

7 A We sold some, yes. If they were brand new
8 at full fair trade prices, if they were demo models
9 at a discount, depending on the condition of the speakers.

10 Q How do you know what the fair trade price was?

11 A We received a price schedule from you.

12 Q How many used or demon models did you sell,
13 have you sold in this period?

14 A Six, maybe eight pairs, possibly.

15 Q And did you keep receipts on those?

16 A The customer gets a receipt and we keep a
17 receipt, sir.

18 Q What do you write on that receipt?

19 A Demonstration model.

20 Q Tell me, is it your policy to claim as a
21 demonstration model any speaker that has been on the floor
22 for any length of time?

23 A Of course.

24 Q So if you put it out in the morning and sell
25 it in the afternoon, that's a demonstration model?

Antar - cross

62

1
2 A No, that's not a demonstration model. It
3 depends upon the condition of the speaker when we sell it.

4 Q That's what I am trying to get at.

5 A It depends upon the condition.

6 Q What are the standards that you establish
7 to claim a demonstration model?

8 A If it -- eventually when you put -- when you
9 put -- when you put merchandise in the sound room a lot of
10 people handle it, touch it, it gets scratched.

11 If you kept there it would -- it would actually
12 start to fall apart.

13 Q How long before it can be -- how long must it
14 be on the floor before it becomes a demo model?

15 A There is -- there is no specified time. It
16 depends on how the speaker stands up to -- to the traffic
17 that's used with it. In other words, sometimes it could
18 happen in two days, somebody may spill a cup of coffee on it,
19 customers scratch them, people put cigarettes down on
20 them. God knows.

21 Q Who determines in your organization whether
22 a particular item can sold as a demonstration model?

23 A I do or my cashier.

24 Q Who is your cashier?

25 A Arnold Spindler.

Antar - cross

63

1
2 Q Do the salesmen know whether or not it can
3 be sold as a demonstration model?

4 A They can ask.

5 Q Have they been instructed on the procedure to
6 follow if they believe that an item can or should be sold as
7 a demonstration model?

8 A They -- they always verify the -- the amount
9 of -- you mean -- you are talking about the amount of
10 discount, I guess?

11 Q And the price.

12 A The price, right, it depends upon the condi-
13 tion of the speaker.

14 Q By the way, how many model L36s have you sold
15 since last October?

16 A Possibly --

17 Q New ones?

18 A New Ones?

19 Maybe two or three.

20 Q And how many used or demonstratio models?

21 A I -- I don't sit down and keep track of every
22 sincel speaker that is sold and every single item that's
23 sold. It would be physicially impossible.

24 Q Well, in connection with this proceeding,
25 * Mr. Antar, did you review your records to determine what

Antar - cross

64

1
2 business was in JBL --

3 MR. ANTAR: Objection, to that, your Honor.

4 THE COURT: All right, sustained.

5 MR. ANTAR: This is a court proceeding. We
6 are not going into our records of our stock.

7 THE COURT: Well, the fact you didn't bring
8 records, I think, is something significant, but I
9 will sustain the objection.

10 BY MR. GOLDMAN:

11 Q You have shown us a sign that was in the
12 sound room.

13 A Right.

14 Q Did you have any signs or notices posted on the
15 premises indicating that prices had to be verified at the
16 cashier?

17 A No, but that's the -- that's the procedure
18 of the store, though.

19 MR. GOLDMAN: I have no further questions.

20 THE COURT: All right, thank you.

21 Step down.

22 MR. ANTAR: Eddie Antar, please take the stand.

23 THE COURT: How do you spell it?

24 THE WITNESS: Eddie E-d-d-i-e Antar.
25

Eddie Antar - direct

EDDIE ANTAR , called as a

witness herein, having been first duly sworn by the
Clerk of the Court, was examined and testified as
follows:

DIRECT EXAMINATION

BY MR. ANTAR:

Q Mr. Antar, are you part of the management of
Ultralinear Sound Corporation?

A No.

Q Are you a stock holder of Ultralinear Sound
Corporation?

A No.

Q Are you an officer of Ultralinear Sound
Corporation?

A No, sir.

Q Are you a director of Ultralinear Sound
Corporation?

A No, sir.

Q Are you employed by them in any capacity,
whatsoever?

A Yes.

Q And what capacity is that, sir?

A I coordinate advertising, radio advertising.

Q Do you wait on customers?

Eddie Antar - Direct

66

1

2

A No, sir.

3

Q Do you have any say --

4

A Excuse me, excuse me.

5

Q Do you have any say in the management of the

6

corporation?

7

A No.

8

Q Do you direct the management of it in any way

9

whatsoever?

10

A No.

11

Q Are you the owner of the Federally registered

12

trademark known as Crazie Eddie?

13

A Yes, sir.

14

Q Did you ever enter into a trademark license

15

agreement with Ultralinear Sound Corporation?

16

A Yes, sir.

17

Q And does this agreement license them the use of

18

the name?

19

A Yes, it does.

20

Q Thereby paying you a royalty?

21

A Yes, it does.

22

Q Is that your only connection with this -- with

23

the management of this corporation aside from family

24

connection?

25

A That's it.

Eddie Antar - direct

67

MR. ANTAR: No further questions -- one more question.

No, no further questions.

THE COURT: Any cross-examination?

MR. GOLDMAN: Your Honor, may I have the consent which is appended to the injunction, please.

CROSS-EXAMINATION

BY MR. GOLDMAN:

Q Mr. Antar, I show you a document which is appended to the final judgment of permanent injunction in this action which is entitled consent.

Is your signature on that document?

A Yes, it is.

Q You signed a document consenting to the entry of a permanent injunction against you even though you have nothing to do with the management of the company?

A No, I didn't.

Q You didn't sign that?

A I signed it. At that time, it was October 1974. I do not work for the company as of January '75. At that time, I did.

Q I see.

What was your position at the time you signed the injunction?

1
2 A Salesman.

3 THE COURT: What?

4 THE WITNESS: Sales manager, salesman.

5 Q And in January 1975, you gave up those
6 positions and retained the position only of coordinator of
7 advertising?

8 A That's right.

9 MR. GOLDMAN: No further questions, your
10 Honor.

11 THE COURT: All right you may step down.

12 (Witness excused.)

13 MR. ANTAR: Mr. Howard Schreiber, please
14 take the stand.

15 (continued next page.)
16
17
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25

Schreiber - direct

69

HOWARD SCHREIBER, called
as a witness herein, having been first duly sworn
by the Clerk of the Court, was examined and testified
as follows:

DIRECT EXAMINATION

BY MR. ANTAR:

Q Mr. Schreiber, are you a salesman at Ultra-
Linear Sound Corporation?

A Yes, sir.

Q Do you sell JBL speakers on the premises and other
speakers?

A Yes, sir.

Q Can you tell me how you determine the price
of these speakers?

A Each item is marked.

The final sale is the cashier's.

Q You heard Mr. Graziadei testify that you
quoted him prices of JBL L100 speakers, new speakers at a
price below fair trade.

Do you recall Mr. Graziadei and do you recall
waiting on him?

A No, sir.

Q Did you ever quote JBL 100s or any JBL product
below fair trade?

1
2 A No, sir.

3 Q You do have damaged goods in the store, do
4 you not, sir?

5 A Yes, sir.

6 Q And those damaged goods, should they be
7 covered by fair trade restrictions, are those damaged goods
8 sold at the full fair trade prices?

9 A No, sir.

10 Q Are they sold below the fair trade prices?

11 A Final sale has to be taken up with the
12 cashiers.

13 It's not my job.

14 Q And who makes the prices on the damaged goods,
15 who fixes the prices on them?

16 A Head office manager or the -- the cashier.
17 That's nothing to do with me.

18 MR. ANTAR: I have no further questions,
19 your Honor, of the witness.

20 MR. GOLDMAN: I have no questions, your
21 Honor.

22 THE COURT: All right.

23 Step down. Thank you.

24 (Witness excused.)
25

Borris - direct

B A R R Y B O R R I S , called as a
witness herein, having been first duly sworn by the
Clerk of the Court, was examined and testified as
follows:

DIRECT EXAMINATION

BY MR. ANTAR:

Q Mr. Borris, are you a salesman at Ultralinear
Sound Corporation?

A Yes, I am.

Q Do you sell JBL products over there?

A Yes.

Q Do you discount JBL products and new JBL
products?

A No.

Q Do you have damaged or demonstrator models
of JBL products over there, sir?

A Yes, we do.

Q Do you sell any of these -- if you have any
damaged goods do you sell them at the fair trade price
or below the fair trade price?

A Below the fair trade price.

Q And who determines the price and the damage,
sir?

A Salesmanager or the cashier.

Borris - direct

72

1
2 Q You heard Mr. Lawrence Fay testify that he
3 spoke with you on April 26th, 1975; do you recall waiting
4 on Mr. Fay?

5 A No, I do not.

6 Q You heard him testify that you gave him an
7 approximate price on two new L100 speakers.

8 Can you tell me your method of selling --

9 A I ask a customer--

10 Q -- when a customer approaches you?

11 A I ask the customer what he is interested in,
12 if he wants to buy immediately and I --

13 Q If the customer does not want to buy immediately
14 do you get into the nitty and gritty of selling?

15 A No, I do not. If it's very busy I tell them
16 to come back when there is time to discuss it further.

17 Q Did you ever sell a new pair of JBL speakers
18 at any price below the fair trade?

19 A No.

20 MR. ANTAR: I have no further questions,
21 your Honor.

22 MR. GOLDMAN: I have no questions of this
23 witness your, Honor.

24 THE COURT: All right, you may step down.

25 (Witness excused.)

Graziadei - direct

73

MR. ANTAR: I am through, your Honor.

MR. GOLDMAN: Your Honor, I recall the two shoppers to ask each one one question.

F R A N K G R A Z I A D E I , having been previously duly sworn by the Clerk of the Court, resumed the stand and testified further as follows:

Q Mr. Graziadei, did the salesman with whom you spoke on the date set forth in your affidavit tell you that the speakers he was quoting on were damaged?

A No, he did not.

Q Did he tell you they were being used as demonstration models?

A No, he did not.

MR. GOLDMAN: No further questions, your Honor.

THE COURT: Wait a minute, any cross?

MR. ANTAR: Yes, your Honor.

CROSS-EXAMINATION

BY MR. ANTAR:

Q Sir, did you see fit to put this information down on your report to JBL?

MR. GOLDMAN: Objection, your Honor, the document speaks --

THE COURT: Overruled.

1 A I don't understand your question. About what?

2 THE COURT: About their not being damaged
3 or demonstration.
4

5 THE WITNESS: No, I was under the assumption
6 that they were brand new speakers.

7 Q You were under that assumption, sir?

8 A Yes, I was.

9 Q You could have assumed it improperly, correct?

10 A Yes, definitely.

11 Q Did you see this sign up there, sir?

12 A I don't recall it.

13 MR. ANTAR: No further questions.

14 MR. GOLDMAN: One more, your Honor.

15 PEDIRECT EXAMINATION

16 BY MR. GOLDMAN:

17 Q Mr. Gradiadei, were you told by the salesman
18 that the price quoted you had to be confirmed by the
19 cashier?

20 A No, I was not.

21 MR. GOLDMAN: Thank you, your Honor.

22 THE COURT: All right, you can step down.

23 (Witness excused.)

24 MR. GOLDMAN: Mr. Fay.

25 THE COURT: You are still under oath, Mr. Fay.

Fay - Direct

75

Just take your seat.

LAWRENCE FAY, having been
previously duly sworn by the Clerk of the Court,
resumed the stand and testified further as follows:

DIRECT EXAMINATION

BY MR. GOLDMAN:

Q Mr. Fay, did the salesman with whom you
spoke when you were on the premises of Ultralinear ever tell
you that the speakers being quoted on were damaged?

A No.

Q Did he tell you that the speakers being
quoted on were being used as demonstration models?

A No.

Q Did the salesman tell you that the price
being quoted to you had to be confirmed by the cashier?

A No.

Q Did you see the sign which has been -- Mr.
Antar is holding in his hand on the premises on the date you
were there?

A No.

MR. GOLDMAN: Thank you.

CROSS-EXAMINATION

BY MR. ANTAR:

Q Sir, the same question: Did you see fit to

1
2 make notations of this on your report?

3 A With new speakers there was no reason to make
4 a notation on the report. And if I didn't see the sign I
5 could not make notations out on my report either because I was
6 not aware of its existence.

7 Q Did you testify that there were signs there
8 but you did not read all of them?

9 A Yes, I testified that I did not read the
10 sign.

11 Q So this sign could have been there and you did
12 not read it?

13 A Yes, I said I was not aware of it.

14 Q You didn't confirm a price with the cashier,
15 sir?

16 A No, I was not making a purchase there was no
17 need.

18 Q You were not purchasing --

19 A There was no need to -- I was not aware that
20 I had to confirm a price with the cashier but there was no
21 need for me since I was not purchasing as I stated before.

22 Q Since you were not purchasing, there was no need
23 for you to confirm a price?

24 A I was not aware of any need to confirm with the
25 cashier.

Pay - cross

77

1 MR. ANTAR: I have no further question.

2 MR. GOLDMAN: I am finished, your Honor.

3 THE COURT: All right. Now I don't know how
4 much argument we need.

5 MR. GOLDMAN: Well I have nothing to --

6 THE COURT: Let me see the January letter
7 that was written.

8 MR. GOLDMAN: It's attached to my affidavit.
9 Oh, I am sorry, your Honor.

10 THE COURT: It seems to me, Mr. Antar, that the
11 two significant things in the case are that with
12 knowledge that there was contempt proceeding pending,
13 the defendants have brought no sales records to show
14 that they ever sold JBL speakers at fair trade prices
15 and that in Mr. Eddy E-d-d-y Antar's letter --
16 this is the exhibit, is it?

17 MR. GOLDMAN: It was not offered in evidence,
18 your Honor. It was read.

19 MR. ANTAR: I attempted to offer that in
20 evidence, your Honor. I thought I did.

21 THE COURT: I don't have it marked as received,
22 come to think of it.

23 MR. GOLDMAN: I believe the witness read it
24 into the record from the witness stand.
25

1
2 THE COURT: At any rate, there was nothing in
3 the letter to say that you should make sure that
4 what we're selling are not demonstration models or
5 damaged models.

6 MR. ANTAR: I addressed myself only to
7 Mr. Goldman's present proceedings, your Honor, and
8 did not deem it fit to bring sales records into
9 court.

10 THE COURT: Well, I find that the contempt has
11 been established. I see no reason to disbelieve the
12 testimony of Mr. Graziadei or Mr. Fay.

13 The Ultralinear salesmen, of course, were
14 interested parties and they didn't even remember it
15 and as I say, the absence of proof which would have
16 been in the possession of the defendants justifies
17 an inference that if they had brought sales
18 records, they would not have supported their claim.

19 I think the \$850.00 attorney's fee is a
20 reasonable amount. Submit an order for \$850.00.

21 MR. GOLDMAN: Thank you, your Honor.

22 MR. ANTAR: Thank you, your Honor.

23 THE COURT: I would have added that I thought
24 that sign about demo-corner was a dodge to get
25 around fair trade price laws.

1
2 MR. ANTAR: Offhand, your Honor, I think that
3 testimony on behalf of the plaintiff's moving parties
4 was a lot of hot air, my personal opinion, when he
5 couldn't even establish the price or how he spoke
6 or what he spoke.

7 Well, either way, thank you for your time,
8 your Honor.

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
FRANK GRAZIADEI	4	12	28	
LAWRENCE FAY	29	34		
BURT BROOKS	47	49		
EDDY ANTAR	53	60		
EDDIE ANTAR	65	67		
HOWARD SCHREIBER	69			
BARRY BORRIS	71			
FRANK GRAZIADEL	73	73	74	
LAWRENCE FAY	75			

E X H I B I T S

<u>PLAINTIFF'S</u>		<u>FOR ID</u>	<u>IN EV</u>
1	Three-page document	11	12
2	Two-page document	32	34

DEPENDANT'S

A	Sign.	58
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PLAINTIFF'S EXHIBIT 1.



James B. L... (faint text)

7/10/75

Form No. 100

DEALER SHOPPING FORM

Shopper Frank Friedman Date 5/31/75
 Dealer's Name Ultra Vision/Krazy Eddie Time 7:30 pm
 Address 1117 Kings Highway Franchised
Brooklyn NY Non-Franchised ✓

- Overall appearance of the store (inside and out) VERY CROWDED INSIDE, BOTH UPSTAIRS & DOWNSTAIRS, NEW SOUND ROOM UPSTAIRS
- From your observation, what is the major business of the store STEREO EQUIPMENT

3. Speaker Demonstration Area: (Your Opinion)
 Adequate Size ☒ Yes ☐ No Acoustically Effective ☒ Yes ☐ No

4. In your opinion, what are the three most prominent speaker lines displayed:
 1. ACQU-PHASE 2. SBL 3. CERNIA-VERA

5. In your opinion, what are the three most prominent receiver lines displayed:
 1. KENWOOD 2. SANYO 3. SANSUI

You have now represented yourself to the salesman as a prospective customer for either a package system or an additional pair of speakers for your existing stereo system.
 (You should be prepared to quote model numbers for your existing components if asked)

6. On request, what speakers were recommended and why? ACQU-PHASE III - BETTER WORKER THAN COMPARABLE PRICED SPEAKERS

7. After you had listed JBL, what were the salesperson's comments regarding JBL?

FLAT MID-RANGE, OLD FASHION CONSTRUCTION - HASN'T IMPROVED

8. In your opinion, were the salesperson's comments presented as ☐ opinion ☒ fact

PLAINTIFF'S EXHIBIT 1

JBL Salesperson's Name

Would you buy a pair of JBL loudspeakers from this salesperson? ☐ Yes ☒ NoWhy? BECAUSE I HAVE IN SOUNDING THE SAME, WERE \$75 LESS, I SUPPOSE I WERE BETTER CONSTRUCTEDObtain salesperson's business card for a proposed later visit. If no card is available, you must obtain the salesperson's full name: WITH EDDY'S SALESMAN WHO DON'T ON COMMISSION THIS IS ALMOST IMPOSSIBLE.If it is impossible to obtain full name, carefully describe salesperson: ABOUT 6' 3" NEAT - SHORT, 300 LBS., CURLY BLACK HAIR, BROWN EYES.

The following is to be completed only in states where fair trade laws are applicable:

c. Request to hear demonstration of JBL speakers and ask dealer the price.

Model No. L100Price Quoted \$475or L36PAIR3. With the purchase of JBL speakers, were any of the following offered? NOFree Goods ☐Deduction for non-existing trade-in ☐Falsified Invoice ☐Other ☐

(Use other side for details)

4. If offer was made in "system" form, indicate: (A "system" normally consists of a receiver, a turntable and at least one pair of JBL loudspeakers)

Items in system _____

Price of Complete System

1. _____

Fair Trade Price of JBL Speakers

2. _____

JBL's DIFFERENCE PRICE (1 minus 2 = D/P)

3. _____

Difference Price offered by Salesman
(System less JBL's)

4. _____

NOT
NECESSARY
61 MAX
BELOW
FAIR-TRADE15. Indicate whether free goods or services were offered in the original system quote and not in the difference/price quote. NO16. Indicate if a purchase was made (no purchase may be made without prior authorization from JBL). Indicate model number, serial number, price and attach receipts where applicable. NO17. Name and address of witness NO18. Any additional comments: (Use reverse side if necessary) THE SERIAL #S OF THE L-100'S ARE ON THE BACK OF THIS FORM. SALESMAN FELT THAT JBL'S FAILURE TO CHANGE ITS SPEAKER CONSTRUCTION MAKES IT AN OVERPRICED SPEAKER - YET HE OFFERS TO SELL THE PAIR FOR \$475 WHILE THE FAIR TRADE PRICE IS \$636, CLAIMED TO

113a

PLAINTIFF'S EXHIBIT 1

• ~~It~~ THE STORE CONTAINS AN
EXCELLENT SELECTION OF ALMOST
EVERY TYPE OF RECEIVER & SPEAKER
possible.

37718

108252A

108553A

Acorn Phone III

114a

PLAINTIFF'S EXHIBIT 2.

VIOLATION



J. Edgar Hoover Building, 440 Constitution Avenue, N.W., Washington, D.C. 20535

JBL

Form No. SR574

DEALER SHOPPING FORM

Shopper Lawrence Long Date Apr. 26
 Dealer's Name Vitrolume / Crazy Eddie Time 4:00
 Address 117 Kings Highway Franchised _____
Brooklyn NY Non-Franchised ☒

1. Overall appearance of the store (inside and out) neat, orderly, not overly attractive
2. From your observation, what is the major business of the store Stamps
3. Speaker Demonstration Area: (Your Opinion)

Adequate Size ☒ Yes ☐ No Acoustically Effective ☒ Yes ☐ No

4. In your opinion, what are the three most prominent speaker lines displayed:
1. JBL 2. Pac 3. MARTIN
5. In your opinion, what are the three most prominent receiver lines displayed:
1. Pioneer 2. Shure 3. K. sound

You have now represented yourself to the salesman as a prospective customer for either a package system or an additional pair of speakers for your existing stereo system.
 (You should be prepared to quote model numbers for your existing components if asked).

6. On request what speakers were recommended and why? I advised to listen to MARTIN speakers. Sounded best. They were the best for the money.
7. After you mentioned JBL, what were the salesperson's comments regarding JBL?
Over priced. False bass sound.
8. In your opinion, were the salesperson's comments presented as ☐ opinion or ☒ fact?

PLAINTIFF'S EXHIBIT 2

Two
Dealer Shopping Form

9. Would you buy a pair of JBL loudspeakers from this salesperson? ☐ Yes ☒ No

Why? Appeared to be unreliable and hasty.

10. Obtain salesperson's business card for a proposed later visit. If no card is available you must obtain the salesperson's full name: Barry 28 yrs - Red Hair (bolding) Red mustache

11. If it is impossible to obtain full name, carefully describe salesperson: _____

BARRY - NOT ABLE TO OBTAIN CARD OR LAST NAME

The following is to be completed only in states where fair trade laws are applicable:

12. Request to hear demonstration of JBL speakers and ask dealer the price.

Model No. <u>L100</u>	Price Quoted <u>500.00 per</u>
<u>L36</u>	<u>300.00 per</u>

13. With the purchase of JBL speakers, were any of the following offered?

Free Goods ☐ Deduction for non-existing trade-in ☐
Falsified Invoice ☐ Other ☐ (Use other side for details)

14. If offer was made in "system" form, indicate: (A "system" normally consists of a receiver, a turntable and at least one pair of JBL loudspeakers)

Items in system Not in system

Price of Complete System 1. _____

Fair Trade Price of JBL Speakers 2. _____

JBL's DIFFERENCE PRICE (1 minus 2 = D/P) 3. _____

Difference Price offered by salesman 4. _____
(System less JBL's)

15. Indicate whether free goods or services were offered in the original system quote and not in the difference/price quote. no free system quote

16. Indicate if a purchase was made (no purchase may be made without prior authorization from JBL). Indicate model number, serial number, price and attach receipts where applicable. No

17. Name and address of witness _____

18. Any additional comments: (Use reverse side if necessary) _____

CRAZY EDDIE'S
DISCOUNT CORNER

ALL DEMO MODELS

GREATLY REDUCED !

DEFENDANT'S EXHIBIT A.

116a

**ALL DEMO MODELS
GREATLY REDUCED !**

**ASK FOR OUR
LOW PRICES**

SOME SLIGHT IRREG.

DEPENDENT'S EXHIBIT A

117a

services of two

the within Appendix

herein 6th

November 5

Attorney for

COPY RECEIVED
SQUADRON, GARTENBERG
ELLENOFF & PLESENT
ATTORNEYS FOR

Plaintiff Appellants

By Neal M. Goldman

